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192

Vol. I

749458 Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945 46

No. 75 21

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED MAY 14, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 75

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

VOL. I

INDEX

	Original	Print
Record from D. C. U. S., Western District of Oklahoma	1	1
Petition	1	1
Exhibit "A"—Collection of correspondence prior to initial order of I. C. C.	15	13
Exhibit "B"—Initial page of Valuation Order No. 26 (omitted in printing)	53	
Exhibit "C"—I. C. C. letter rejecting the report first filed	55	46
Exhibit "D"—Excerpt from Amended Petition before I. C. C. (omitted in printing)	57	
Exhibit "E"—Petition for rehearing, reargument and reconsideration, filed with I. C. C. (omitted in printing)	60	
Appendix "A"—Report of I. C. C. Division 2, dated December 14, 1942	77	47
Exhibit "F"—Petition for rehearing and vacation of report and order of the Commission on reargument (omitted in printing)	89	
Appendix "A"—Report of I. C. C. on reargument, dated June 12, 1944	100	57
Appendix "B"—I. C. C. order of June 12, 1944, directing compliance within 90 days	111	67
Exhibit "G"—I. C. C. order denying petition for rehearing and vacation of report and order of the Commission on reargument	112	67

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 16, 1945

—9735

Record from D. C. U. S., Western District of Oklahoma—Continued	Original	Print
Order for Associate Judges	113	68
Intervention of Interstate Commerce Commission	114	68
Answer of Interstate Commerce Commission	115	69
Answer of United States of America	122	73
Amendment to Petition	128	76
Order of Oct. 12, 1944, suspending enforcement of I. C. C. order pending final disposition of case	129A	78
Opinion, Chandler, J.	130	79
Dissenting opinion, Vaught, J.	138	86
Petitioner's Objections to Proposed Findings of Fact Submitted by respondents	146	93
Petitioner's Objections to Proposed Conclusions of Law	151	98
Order Denying Petition for Rehearing	154	100
Petitioner's Requested Findings of Fact	155	100
Petitioner's Requested Conclusions of Law	160	106
Findings of Fact and Conclusions of Law	162	107
Final Decree	169	113
Petition for Appeal to Supreme Court of United States	170	114
Order Allowing Appeal	171	114
Assignment of Errors	172	115
Appeal Bond (omitted in printing)	177	
Notice of Appeal	178	118
Notice to Attorney General of State of Oklahoma	179	119
Application for Authority to Transmit Originals of Certain Exhibits	180	120
Order to Transmit Original Exhibits	181	120
Reporter's Transcript of Proceedings of Oct. 12, 1944 (Petitioner's Witness, J. J. Dunlevy—side fol. 196)	182	121
Reporter's Transcript of Proceedings of April 13, 1945	207	134
Reporter's Transcript of Proceedings of April 16, 1945	210	135
Praecipe for transcript of record on appeal	215	137
Clerk's certificate to transcript of record (omitted in printing)	220	
Stipulation of June 4, 1945, to transcribe additional portions of proceedings of April 13, 1945	221	142
Transcript of Proceedings of April 13, 1945	223	143
Clerk's certificate to additional transcript (omitted in printing)	236	
Supplemental transcript	238	150
Findings of Fact and Conclusions of Law proposed by Defendants	240	150
Clerk's certificate to supplemental transcript (omitted in printing)	248	
Proceedings before Interstate Commerce Commission, Valuation Docket No. 1267	249	157
Amended Petition	249	157
Clerk's note that Exhibit X is omitted at this point because it is bulky and is transmitted in the original	254	160
Exhibit XII—Letter of July 22, 1941, from Bureau of Valuation, rejecting tendered report	255	161

	Original	Print
Record from D. C. U. S., Western District of Oklahoma—Continued		
Proceedings before Interstate Commerce Commission, Valuation Docket No. 1267—Continued		
Reporter's Transcript of Proceedings	257	162
Caption and appearances	257	162
Testimony of G. E. Leverton	263	164
Roy G. Collier	284	178
George F. Brigance	293	183
E. G. Wilmoth	303	189
L. A. Snyder	327	205
Exhibit 1—Cimarron Valley's application for certificate of convenience in Kansas	423	264
Exhibit 2—Transcript of testimony before the Kansas Corporation Commission	425	265
Exhibit 3—Assortment of documents in connection with Cimarron Valley condemnation proceedings	439	272
Exhibit 4—Bill of sale from Cimarron Valley to Champlin Refining Company	451	280
Exhibit 5—Form of assignment of right of way	453	281
Exhibit 6—Statement of products delivered from various terminals in first six months of 1941	454	282
Exhibit 7—Statement of sales by states in first six months of 1941	455	283
Exhibit 8—Differentials at Superior, Nebraska	457	285
Exhibit 9—Differentials at Champlin, Iowa, effective June 11, 1941, to destinations in Iowa	472	301
Exhibit 10—Differentials from Champlin, Iowa, supplement No. 1, issued June 20, 1941	493	329
Exhibit 11—Differentials from Champlin, Iowa, supplement No. 2, issued September 20, 1941	513	354
Clerk's note that Exhibit 12 is omitted because it is part of amended petition to I. C. C.	524	367
Exhibit 13—Differentials from Champlin, Iowa, supplement No. 1, issued June 20, 1941	525	368
Exhibit 14—Chicago Journal of Commerce quotations at Snyder question 44	534	380
Exhibit 15—Quotations from Platt's Oilgram, (p. 40 Nat'l Petroleum News), referred to in Snyder's testimony	535	382
Contracts and sales papers included in Snyder's testimony, retaining their original designations as Exhibits "A" to "T", inclusive	536	383
Exhibit 16—Incorporation of Champlin Refining Company, amendments to the charter, and authorizations to do business in other states	580	427
Exhibit 17—Certificate of incorporation of Cimarron Valley (omitted in printing)	581	
Exhibit 18—Amendment to certificate of incorporation of Cimarron Valley	582	428
Exhibit 19—Authorization for Cimarron Valley to do business in Oklahoma (omitted in printing)	586	

Record from D. C. U. S., Western District of Oklahoma—Continued
Proceedings before Interstate Commerce Commission, Valuation Docket No. 1267—Continued
Exhibits—Continued

	Original	Print
Exhibit 20—Increase of capitalization of Cimarron Valley as recorded in Oklahoma (omitted in printing)	587	
Exhibit 21—Authorization for Cimarron Valley to do business in Kansas	588	430
Exhibit 22—Appointment of resident agent in Nebraska for Cimarron Valley (omitted in printing)	589	
Exhibit 23—Authorization for Cimarron Valley to do business in Nebraska	591	430
Exhibit 24—Kansas Corporation Commission certificate of necessity issued to Cimarron Valley	592	430
Exhibit 25—Revocation of Cimarron Valley's certificate of necessity in Kansas	594	432
Exhibit 26—Cimarron Valley's form of application to build a pipe line through various counties in Oklahoma, Kansas and Nebraska	597	434
Exhibit 27—Form of order entered pursuant to foregoing application	600	436
Exhibit 28—Cimarron Valley's permit to cross highways in Oklahoma	603	438
Exhibit 29—Application for excavation under highways in Kansas	606	439
Exhibit 30—Cimarron Valley's application for excavation under highways in Nebraska	610	443
Exhibit 31—Applications to counties in Nebraska and South Dakota to construct pipe line	614	446
Exhibit 32—Form of order pursuant to foregoing applications	617	448
Exhibit 33—Nuckolls County, Nebraska, order, supplemental application, and supplemental order	620	450
Exhibit 34—Cuming County, Nebraska, application and order	627	454
Exhibit 35—Transaction in Union County, South Dakota	631	459
Exhibit 36—Application for excavation permit in Nebraska	634	462
Exhibit 37—Correspondence with South Dakota Highway Department	638	466
Exhibit 38—War Department permit to cross Missouri River	643	468
Exhibit 39—Lyon County, Iowa, permit	647	473
Exhibit 40—Sioux County, Iowa, permit	650	476
Exhibit 41—Application to Iowa State Commerce Commission	653	479
Exhibit 42—Order of Iowa State Commerce Commission, dated March 15, 1940	656	481

	Original	Print
Record from D. C. U. S., Western District of Oklahoma—Continued		
Proceedings before Interstate Commerce Commission, Valuation Docket No. 1267—Continued		
Exhibits—Continued		
Exhibit 43—Letter of October 7, 1941, to Iowa State Commerce Commission	665	483
Exhibit 44—Order of Iowa State Commerce Commission, dated October 13, 1941	666	483
Exhibit 45—Valuation Order No. 26 revised effective December 31, 1934	676	486
Exhibit 46—Valuation Order No. 27, April 12, 1935	702	509
Exhibit 47—Leverton memo of December 3, 1941, transmitting copies of correspondence with Treasury Department	716	523
Exhibit 48—Leverton memo of December 3, 1941, transmitting copies of forms of application for permits to do business in states other than that of incorporation (omitted in printing)	000	
Exhibit 49—Balance sheet at December 31, 1940	720	525
Exhibit 50—Minutes of I. C. C. Division 2, dated March 17, 1941	721	526
Report of Interstate Commerce Commission, Dec. 14, 1942	722	526
Order reopening proceeding for reargument and reconsideration	730	537
Report of Interstate Commerce Commission on Reargument, June 12, 1944	731	537
Order for Compliance, June 12, 1944	740	546
Order Denying Rehearing, July 26, 1944	741	547
Order Extending Effective Date of Order for Compliance, September 2, 1944 (omitted in printing)	742	
Petition for Rehearing in District Court	744	549
Exhibit "A"—Photo copy of transcript in *Uncle Sam Oil Co.* case	765	568
Exhibit "B"—Photo copy of brief filed by *Uncle Sam Oil Co.*	825	629
Exhibit "C"—Photo copy of brief for the United States in *Pipe Line Cases*	889	693
Exhibit "D"—Photo copy of brief for the I. C. C. in *Pipe Line Cases*	1035	799
Exhibit "E"—Copy of District Court opinion in *I. C. C. v. Tank Car Oil Corp.*	1154	880
Exhibit "F"—Copy of brief of United States and I. C. C. in *Valvoline Case*	1167	889
Exhibit "G"—Copy of brief of Valvoline Co. in *Valvoline* case	1227	929
Clerk's certificate re petitioner's original exhibits "C," "D," "E," "F," "G," and X	1260A	956
Statement of points to be relied upon	1261	957
Designation of parts of record to be printed	1267	959
Appellees' amended designation of additional parts of record to be printed	1272	962
Order noting probable jurisdiction	1277	965

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559-Civil

CHAMPLIN REFINING COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent

PETITION—Filed Aug. 10, 1944

To the Honorable, the Judges of the District Court of the United States for the Western District of Oklahoma:

The Champlin Refining Company, petitioner, complaining of the United States, Respondent, invokes the jurisdiction of this court under Acts of June 18, 1910, C. 309, Sec. 1, 36 Stat. 539; March 3, 1911, C. 231, Sec. 209, 36 Stat. 1149; October 22, 1913, C. 32, 38 Stat. 219, U. S. C. A., Title 26, Secs. 45 and 45a; Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (C. 229, Sec. 1, 43 Stat. 938, U. S. C. A., Title 38, Section 345, par. 4); Urgent Deficiencies Act of October 22, 1913 (C. 32, 38 Stat. 219, U. S. C. A., Title 28, Sections 45 and 47a), to enjoin, set aside, suspend and annul certain orders of the Interstate Commerce Commission (hereinafter called Commission) dated December 14, 1942, and June 12, 1944, hereinafter more fully set forth; and in support of its petition for injunctive relief, says:

I

Petitioner is a corporation organized and existing under the laws of the State of New Mexico, having its principal office at Enid, Oklahoma.

[fol. 2]

II

Petitioner is, and was at all times hereinafter mentioned, engaged in the business of producing and refining crude petroleum, and marketing the refined products of crude petroleum. At all times hereinafter mentioned Petitioner has owned and operated, and now owns and operates

a refinery at Enid, Oklahoma, by means whereof it refines crude petroleum for the purpose of recovering and marketing the refined products thereof, including gasoline, kerosene, and tractor fuel, which refined products are sold and distributed by Petitioner in Oklahoma, Kansas, Nebraska, Iowa, and other states. Petitioner's sales of said products in said several states tributary to said pipe line amount only to approximately three per cent (3%) of the total amount of such products sold in said states. Petitioner has constructed storage plant facilities at its Enid, Oklahoma, refinery, into which gasoline, kerosene and tractor fuel are deposited as manufactured, and for use in connection with the distribution of such products, has constructed a private pipe line from the Petitioner's storage plant at Enid, Oklahoma, to its storage facilities at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa. The line was built as a plant facility to be used exclusively for the distribution of refined petroleum products owned and manufactured by Petitioner at its Enid refinery, never having been used to move any petroleum products or products owned by (or purchased from) any other person, firm or corporation.

III

Petitioner (one of the pioneers in the use of a welded, seamless, steel pipe line for distribution of gasoline, kerosene and tractor fuel) commenced the construction of the line in 1935. The first opening on the line was made at Hutchinson, Kansas, which is 113 miles from the Enid refinery. The line was not again opened in the State of Kansas at any point, being carried to Superior, Nebraska, where the second opening was placed in the line. The line [fol. 3] was then carried through Nebraska, South Dakota and Iowa, without any opening except at Rock Rapids, Iowa. At no place except Enid, Oklahoma, Hutchinson, Kansas, Superior, Nebraska and Rock Rapids Iowa, can any quantity of petroleum or petroleum products be placed in or taken from the pipe line. Furthermore, no other company or operator of a products pipe line or of any other kind of pipe line, has been permitted to make any connection with the line in question, nor has any individual engaged in the gasoline, kerosene or fuel oil businesses been permitted to make any connections therewith.

Title to the manufactured product placed in said pipe line at the Enid, Oklahoma, storage tanks is retained in the Champlin Refining Company until the product has come to rest in storage tanks at some one of the three terminals of the pipe line hereinbefore identified, and thereafter until sold from said tanks. In consequence of such operation, no sale has ever been made at the Enid refinery to be delivered through such pipe line. In every instance, the sales of products which have been transported through the pipe line, have been made out of the storage tanks at some one of such terminals.

Said pipe line has at all times been:

(*a*) owned, used and operated solely by Petitioner as a plant facility for moving its own products of Petitioner's Refinery to Petitioner's own marketing and storage plants, which use is incidental to and a part of Petitioner's private business as a producer and refiner of crude petroleum and a marketer of the products of crude petroleum;

(*b*) so mechanically constructed and operated that it has not had any facilities or means for receiving, transporting, carrying, storing or delivering any petroleum products or other commodities for any person other than Petitioner, and,

(*c*) used and operated as a private carrier for Petitioner's property and as a plant facility to Petitioner's refinery.

[fol. 4] IV

The products pipe line so constructed has been in partial operation to Hutchinson, Kansas, since July, 1935, to Superior, Nebraska, since September, 1935, and in full operation since the completion of the line into Rock Rapids, Iowa, on or about May, 1940. Its status as a private carrier was first questioned by the Bureau of Valuation of the Interstate Commerce Commission in the manner shown by correspondence set forth in its entirety as Exhibit "A" in the volume of exhibits separately printed and filed herewith as a part of this Petition.

The Commission's conclusion to bring about a "test" case, is evidenced by its minute of March 17, 1941, which reads as follows:

"Valuation—1980

"At a Session of the Interstate Commerce Commission, Division 2, held at its Office in Washington, D. C., on the 17th day of March, A. D. 1941.

"Clyde B. Aitchison, Walter M. W. Splawn, J. Haden Alldredge, Commissioners.

"Recommendation made by Director Lewis in memorandum of February 7, 1941, to Commissioner Miller, that the Bureau of Valuation proceed against either the Champlin Refining Company or the Standard Oil Company of Indiana in such manner as will bring before the Commission the question of jurisdiction under Section 19a for the purposes of a test case, approved, Commissioner Splawn voting in the negative."

Later (about May 15, 1941) the Director of Valuation of the Commission notified your Petitioner that, (in conformity with the provisions of Valuation Order No. 26, effective December 31, 1934, a copy of which order is included as Exhibit "B" in the volume of exhibits separately printed and filed herewith), it was required to prepare and file with the Commission, on or before September 1, 1941, [fol. 5] a complete inventory of the above-described pipe line property, showing the quantities, units, classes, kinds and condition thereof.

In compliance with such direction, the Champlin Refining Company, on July 17, 1941, did tender to said Director of Valuation of said Commission, a full, true and correct report of all data which said company possesses with regard to said private pipe line, fully supported by maps and detail drawings of construction, which report was rejected and returned by the Commission to the Champlin Refining Company for the reason, as the petitioner verily believes, that the same was not made upon a form in use by carriers admitting themselves to be common carriers.

A copy of the letter of rejection of such tendered report is included as Exhibit "C" in the volume of exhibits separately printed and filed herewith.

V

The Petitioner thereupon, on the 21st day of August, 1941, filed with the Commission a Petition designated as

Valuation Docket No. 1267 and did thereafter, on November 12, 1941, file its Amended Petition in said docket number, the material portion of which is included as Exhibit "D" in the volume of exhibits separately printed and filed herewith.

VI

Hearings were held, testimony taken, briefs were filed, and the cause was orally argued on May 20, 1942.

On December 14, 1942, Division 2 of the Commission issued its report of the Commission and made the following finding:

> "We find that the Champlin Refining Company is engaged in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act. It should, therefore, comply with our valuation orders which have been served upon it and furnish promptly the information called for therein. No further order is required at this time."

[fol. 6]

VII

Thereafter, and on February 10, 1943, Petitioner filed with the Commission, a petition for rehearing, reargument and reconsideration, before the full Commission, in which petition there was included as Appendix "A," a print of the challenged report of the Commission, upon which said petition for rehearing, reargument and reconsideration was based. That a true copy of said petition for rehearing, reargument and reconsideration, together with the print of such challenged report of the Commission, is included as Exhibit "E" in the volume of exhibits separately printed and filed herewith.

The petition was granted, except as to rehearing, and reargument was heard. Thereafter, and on June 12, 1944, the report of the full Commission was made and filed, a true copy thereof is attached as Appendix "A" to Exhibit "F" in the volume of exhibits separately printed and filed herewith as a part of this petition. The order of the Commission denying Petitioner's application for relief, entered thereon as of June 12, 1944, is Appendix "B" to Exhibit "F" included in the volume of exhibits separately

printed and filed herewith. Thereafter, Petitioner filed its petition for rehearing upon said report and order, a copy thereof with appendices thereto is included as Exhibit "F" in the volume of exhibits separately printed and filed herewith, which petition was denied on the 26th day of July, 1944 (copy of the order thereon is marked Exhibit "G" in said volume of exhibits separately printed and filed herewith), which denial is arbitrary capricious and wholly contrary to law.

VIII

The petitioner alleges that the Commission's order finding that the petitioner

* * * * * * *

"is a common carrier of refined petroleum products by pipe line"

[fol. 7] and that

* * * * * * *

"it is subject to the provisions of the Interstate Commerce Act"

and should, therefore,

* * * * * * *

"comply with the provisions of valuation orders Nos. 26 and 27 within 90 days from the date of service hereof and as of December 31, 1943,"

are each and all without any substantial evidence to support them, are contrary to law, have the effect to deprive Petitioner of its property without due process of law, and are arbitrary, erroneous, invalid, in excess of the powers conferred upon the Commission by the Interstate Commerce Act, and voidable and void, and should not be enforced or suffered to become operative.

IX

Petitioner alleges that the Commission's order is arbitrary, in excess of its statutory powers, unlawful, and voidable and void and should not be enforced or suffered to become operative, in that the record in the proceedings

before the Commission contains no evidence to support the Commission's findings and conclusions, that:

(1) it makes a charge for transportation;

(2) petitioner is a "pipe line company";

(3) the differential is a charge assessed for transportation of petroleum products;

(4) the carriage by said pipe line is carriage for the public;

(5) Petitioner does not transport said petroleum products for its own use;

(6) there is a so-called public interest in the transportation by Petitioner of its own petroleum products in its [fol. 8] own private pipe line from its own refinery to its own storage facilities; or,

(7) the line is used to transport goods in interstate commerce by a common carrier pipe line.

Such findings and conclusions being without support in the evidence, the Commission unlawfully issued its order requiring Petitioner to subject its pipe line to the valuation orders and other regulatory provisions of the Interstate Commerce Act.

X

That the Commission, through its Bureau of Valuation, attempts to exercise its regulatory authority upon the private products pipe line of Petitioner so as to declare petitioner a common carrier within the provisions of the Hepburn Act of 1906, 34 Stat. 584, the pertinent provisions of which read as follows:

"Regulation in General; Car Service; Alteration of line.

"Sec. 1. (As amended June 29, 1906, April 13, 1908, June 18, 1910, May 29, 1917 August 10, 1917, February 28, 1920, June 19, 1934, and August 9, 1935.) (U. S. Code, Title 49, Sec. 1.)

"(1) That the provisions of this part shall apply to *common carriers* engaged in—"

* * * * * * *

"(*b*) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water;"

* * * * * * *

"(3) The term 'common carrier' as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation (11) as aforesaid as *common carriers* for hire. Wherever the [fol. 9] word 'carrier' is used in this part, it shall be held to mean 'common carrier'."

The provision for valuation of properties by the Interstate Commerce Commission is found in Section 19a:

"*Sec. 19a.* (Added March 1, 1913, and amended February 28, 1920, June 7, 1922, June 16, 1933, and August 9, 1935.) (U. S. Code, Title 49, Sec. 192) (*a*) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part * * *."

The construction and application which the Commission in said report makes of the Interstate Commerce Act, and of the quoted parts thereof, under the facts as established before the Commission, and as alleged in this petition, and as they now and have at all times indisputedly existed, cause said Act to be unconstitutional, for as so construed and applied, the Act would have the effect to compel Petitioner, against its will, to dedicate its property to a public use and thereby deprive petitioner of its property without due process of law.

XI

Petitioner has not at any time:

(*a*) exercised the right or power of eminent domain, and all properties of every character owned by Petitioner or said pipe line, including rights-of-way occupied by the pipe line and land on which appurtenances to the pipe line are built, were all acquired by Petitioner by purchase or by private contract with the owners of such lands;

(*b*) transported for any person, firm or corporation, other than Petitioner, any quantity of petroleum or any other commodity, or engaged in transportation within the meaning of the Interstate Commerce Act;

(*c*) permitted any person, firm or corporation, other than Petitioner, to use said pipe line, or any part thereof, [fol. 10] or anything appurtenant to it, as a means of transporting, containing or storing any petroleum or other commodity,

(*d*) rendered any transportation or storage service for any person except Petitioner;

(*e*) offered the services of said pipe line or any of its facilities to any person, firm or corporation for the transportation, storage or handling of petroleum or any other commodity for hire, or otherwise;

(*f*) held said pipe line out as a facility available to the general public or to any person other than Petitioner, or as a carrier for others;

(*g*) entered into any contract, agreement or understanding with any other person, firm or corporation for the use of said pipe line or its facilities; and, on the contrary, said pipe line has been used only by Petitioner as a plant facility of Petitioner's refinery;

(*h*) established, posted, filed or charged, nor collected nor received from itself or from any other person, firm or corporation, any tariff, rate or other charge of any character or description for the movement of petroleum or any other commodity by means of said pipe line;

(*i*) assumed or been willing to assume, either the duties, obligations or privileges of either a common carrier or a contract carrier;

(*j*) made any contract of sale or purchase of any petroleum or refined product of petroleum or other commodity upon condition that the same would be transported through said pipe line;

(*k*) made any exchange of products which involved the use of said pipe line for the transportation of the products exchanged; or,

(*l*) by contract, act, omission or agreement dedicated, offered or devoted itself, its property or its pipe line to any public use, or suffered anything to be done or omitted to be done that would constitute either Petitioner or said [fol. 11] pipe line a common carrier within the meaning of the Interstate Commerce Act, or Petitioner to become a pipe line company within the meaning of said Act.

Requiring Petitioner to comply with the valuation order of the Commission, will constitute the taking of the property of Petitioner without just compensation therefor while converting into a public use that which is wholly private property, thereby depriving the Petitioner of its property and property rights in derogation of the constitutional guaranties as to due process and the equal protection of the laws.

XII

No person, firm or corporation has ever demanded or requested the services of said pipe line for the storage, handling or transportation of petroleum, petroleum products or any other commodity; and no person, firm or corporation, except Petitioner, is or ever has been, dependent upon said pipe line as a means of transportation or source of supply for his or its requirements of petroleum or petroleum products. No prospective purchaser of refined products in said area is bound by trade conditions to purchase from petitioner. Competition in said area is unhampered. Petitioner does not have or maintain a monopoly of the petroleum business in said area or of a means of transportation. The customer is able to procure the Petitioner's products at the price for which he could have procured products of like specifications from other manufacturers however advantageously such other manufacturers might be situated in such area. Petitioner's products line was constructed and has been used and operated solely for the purpose of enabling Petitioner to overcome market handicaps to Petitioner brought about by "common carrier" transportation disadvantages in the location of Petitioner's refinery.

XIII

Petitioner alleges that said pipe line is necessary to enable it to prosecute its business and maintain its com-

[fol. 12] petition with other marketers of petroleum products in the area traversed by its said pipe line. The entire capacity of said pipe line is and will be constantly required by Petitioner to supply its customers and to maintain its marketing position. If Petitioner should be required to surrender to the public the use of said pipe line, its private business would be injuriously affected, its ability to retain its customers and to maintain its competitive position in the territory now served by said pipe line would thereby be greatly diminished and possibly destroyed. Thereby Petitioner's property by legislative fiat would be dedicated to a public use, a use to which Petitioner has never devoted its property and is not now willing to devote its property.

XIV

Petitioner further alleges that to hold that said pipe line is a common carrier would have a detrimental economic effect upon the public at large. Throughout the United States there have been constructed and are now operated thousands of miles of pipe lines similar to the one referred to in this petition. These lines have been for many years regarded by their owners, public authorities, and the public in general, as mere plant facilities. The recognition of such lines as private has been the primary inducement for the oil companies to construct and operate them. If such pipe lines are now held to be common carriers, future construction of such lines will cease or the construction thereof be greatly reduced. Such result will be detrimental to the interests of the purchasers of petroleum products for the reason that it would increase the cost to the consumer of the products heretofore distributed through such facilities and would tend to remove or reduce a heretofore efficient means for the distribution of petroleum products in a national emergency.

XV

The Commission's order, entered July 12, 1944, requires compliance within a period of ninety days from the date [fol. 13] thereof. Petitioner avers that if within such period of ninety days the valuation order is not stayed by this Court, Petitioner will be subjected to the penal provisions of the Act and compelled to give access to its records

to the Commission's employees and its agents; to devote considerable time and labor to the preparation of the data required by the order; to file and publish tariffs, thus holding itself out to the public as a common carrier; to file reports to the Commission; to readjust substantially its business, including its pipe line operation; all of which will require the expenditure of large sums of money, to Petitioner's irreparable damage. Petitioner also avers that the preparation for the hearings before this Court, will require much time and effort, and that it will not be possible to prepare adequately therefor within the ninety-day period. Furthermore, no individual, partnership or corporation, or organization of any kind, other than Petitioner, participated in the proceedings before the Interstate Commerce Commission, and thus no damage will be occasioned or interest impaired by a stay or suspension of the order until the final decision of the Court and, therefore, compliance with the valuation order should be suspended pending final determination of this proceeding. The damages which will result to Petitioner from the challenged orders of the Commission are irreparable and Petitioner does not have any adequate remedy at law.

Wherefore, your petitioner, being without adequate remedy at law, respectfully prays:

1. That upon the filing of this petition, a judge of this court shall call to his assistance, in the hearing and determination thereof, two other judges of whom at least one shall be a Circuit Judge.

2. That process may issue against the respondent, The United States of America, and that after not less than five (5) days' notice to the Interstate Commerce Commission and to the Attorney General of The United States, as provided by law, a hearing be held at Oklahoma City, Okla- [fol. 14] homa, and an interlocutory injunction be issued, staying and suspending the said order of the Interstate Commerce Commission.

3. That upon final hearing of this cause a permanent injunction issue decreeing that said order of the Commission is null and void and its enforcement, execution and operation forever enjoined, and that the United States of America be restrained from issuing any further orders, instituting or further prosecuting any proceeding to en-

force the aforesaid order or any subsequent orders relating thereto.

4. That such other and further relief as may be proper in the premises be granted the petitioner.

Harry O. Glasser, Enid, Oklahoma, Dan Moody, Austin, Texas, Attorneys for Petitioner.

Duly sworn to by L. A. Snyder. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 15] EXHIBIT "A" TO PETITION

Interstate Commerce Commission
Washington, D. C.

Wire: February 9; 1935

Please send at once your complete regulations governing the building and operation of an interstate gasoline pipe line; also what reports required after line is in operation.

Champlin Refining Company, Scarritt.

Interstate Commerce Commission
Bureau of Statistics
Washington

GAC:ACC February 12, 1935

Champlin Refining Company, Enid, Oklahoma.

DEAR SIRS:

This office has received your inquiry of February 9, concerning regulations covering the building and operation of an interstate gasoline pipe line. This Commission has issued no regulations along this line, such a company, as soon as it participates in interstate commerce, becoming subject to its jurisdiction and being expected to keep its accounts in conformity with classifications which have been prescribed therefor. A copy of the Uniform System

of Accounts for Pipe Lines is obtainable from the Superintendent of Documents, Government Printing Office, Washington, D. C., at the price of ten cents.

After companies commence interstate operations they are expected to render returns in forms which are prescribed by this Commission.

It is requested that you furnish definite information as to the plans of your organization, whether construction [fol. 16] has commenced, if operations are now under way, and whether transactions in interstate commerce have occurred.

Very truly yours, M. O. Lorenz, Director of Statistics, By GAC.

Interstate Commerce Commission
Bureau of Statistics
Washington GAC:ACC

March 26, 1935

Champlin Refining Company, Enid, Oklahoma.

DEAR SIRS:

In letter of February 12, this Bureau requested information concerning the proposed construction of a pipe line by the Champlin Refining Company, whether such construction has been commenced and possibly completed, and if operations are now under way. In the event that the actual movement of oil has commenced, will you kindly name the termini and the connections which are maintained with other pipe line carriers?

Very truly yours, M. O. Lorenz, Director of Statistics, By GAC.

April 10, 1935

Interstate Commerce Commission, Bureau of Statistics, Washington, D. C.

Attention of Mr. M. O. Lorenz

GENTLEMEN:

Your letter of March 26th is received.

In the first place we have no record of ever having received a letter of you under date of February 12th.

For your information the construction of our pipe line [fol. 17] from Oklahoma to Nebraska is well under way, probably by the end of the week the work will be nearly half completed. It will probably be about the first of June before we will be able to put any gasoline through the line.

If there is any further information we can furnish, please call on us.

Very truly yours, ——, HHC:G

Interstate Commerce Commission
Bureau of Statistics
Washington

GAC:ICH
546514

April 16, 1935

Mr. H. H. Champlin, President, Champlin Refining Company, Enid, Oklahoma.

Dear Sir:

It would appear from your letter of April 10 that it is the intention of the Champlin Refining Company to participate in the interstate movement of oil as soon as construction work which is now under way is completed.

I am sending to you, under separate cover, a set of the accounting classifications of this Commission of current effect with respect to carriers by pipe line. The accounts of your organization should be kept in conformity with these publications as soon as interstate operations commence.

It is desired that you inform this office as to the date of the commencement of the interstate transactions.

At the close of the present year, copies of appropriate forms will be furnished in which to submit reports for [fol. 18] that portion of the present calendar year during which interstate commerce may be conducted.

Very truly yours, M. O. Lorenz, Director of Statistics, by GAC.

Enclosures under separate cover.

Interstate Commerce Commission

Bureau of Valuation

Washington JEB:JB

In Reply Address Interstate Commerce Commission
Bureau of Valuation

January 10, 1936.

Subject: Cimarron Valley Pipe Line Company Valuation of Property

Mr. H. H. Champlin, President, Cimarron Valley Pipe Line Company, Enid, Oklahoma.

Dear Sir:

It was noted in the May 30, 1935, issue of "The Oil and Gas Journal" that your company was constructing a gasoline line extending from the plant of the Champlin Refining Company at Enid, Oklahoma, to distribution terminals at Hutchinson, Kansas, and Superior, Nebraska. The article indicated that the line would be completed and operation started on or about June 1, 1935.

This Bureau is now engaged in inventorying, for valuation purposes, all interstate pipe line companies located in the United States. If your company is to be operated as an interstate common carrier, it would be our duty to place the name of your company on our program.

With this in mind, will you please advise whether the pipe line referred to above has been constructed and give us the date operation commenced. Also, we should be pleased to have you advise whether the line is operated [fol. 19] as an interstate or intrastate carrier, sending us a copy of your effective tariff.

An early reply will be appreciated.

Yours very truly, C. H. Spencer, Head Valuation Engineer.

January 15, 1936.

Re: Cimarron Valley Pipe Line Company Valuation of Property

Interstate Commerce Commission, Bureau of Valuation, Washington, D. C.

Attention: Mr. C. H. Spencer, Head Valuation Engineer

DEAR SIR:

Your letter of January 10, 1936, addressed to Mr. H. H. Champlin, has been referred to us for reply. You are correct in stating that in 1935 the Cimarron Valley Pipe Line Company, which is affiliated with the Champlin Refining Company, constructed a gasoline pipe line from Enid, Oklahoma, to terminals in Hutchinson, Kansas, and Superior, Nebraska. Before the line was completed, however, it was conveyed to the Champlin Refining Company, which company has owned and operated the line since its completion.

The Champlin Refining Company is a producing, refining and marketing company, and uses the above described line for the sole purpose of transporting its own products from its Enid refinery to its own tank stations at Hutchinson and Superior. It has never transported or offered to transport the products of any other person, firm or corporation through this line, either as a common carrier or by contract.

No tariff has been issued with reference to this line and no part of the right-of-way was acquired by eminent domain proceedings.

[fol. 20] This is the only pipe line of any nature, for either crude oil or gasoline, which is owned by the Champlin Refining Company.

According to our understanding of the transportation act, the Champlin Refining Company is not subject thereto since it is not a common carrier.

We shall be glad to furnish any additional data which may be required.

Very truly yours, —— ——.

NS-f.

Interstate Commerce Commission
Bureau of Valuation
Washington LH:DFG

In Reply Address Interstate Commerce Commission,
Bureau of Valuation

January 28, 1936.

Subject: Cimarron Valley Pipe Line Company

Mr. Nathan Scarritt, Attorney, Champlin Refining Company, Enid, Oklahoma.

DEAR SIR:

I have your letter of the 15th regarding the Cimarron Valley Pipe Line Company which extends from Enid, Oklahoma, to Superior, Nebraska.

The information you gave us is very enlightening, but we understand that the Gulf Refining Company or the Gulf Pipe Line Company has taken over or is about to take over these properties, either by merger or by operating same as an independent company.

I would like for you to write us in a little more detail regarding your activities, and also furnish us with a small blue print map or sketch showing your pipe lines. In addition, I would like to have some information regarding about fifty miles of pipe line located on the southern end of your properties which we understand run crude oil.

[fol. 21] In other words, any information you can give us will assist us materially in deciding whether the Cimarron Valley Pipe Line Company should be classed as a common carrier.

Yours very truly, C. H. Spencer, Head Valuation Engineer.

February 22, 1936.

Interstate Commerce Commission,
Bureau of Valuation,
Washington, D. C.

Attention: Mr. C. H. Spencer, Head Valuation Engineer

GENTLEMEN:

I regret that my reply to your letter of January 28, 1936, has been delayed for so long, but I have been out of the office since its receipt.

You refer to the line of "Cimarron Valley Pipe Line Company which extends from Enid, Oklahoma, to Superior, Nebraska." This is a mistaken impression, as the gasoline line from Enid to Superior is owned and operated by the Champlin Refining Company.

The Cimarron Valley Pipe Line Company is an affiliated pipe line company, owning and operating crude oil pipe lines, but it does not own or operate the gasoline line in question.

As you state, there was a rumor afloat several weeks ago, which found its way into the press, to the effect that our company would be merged with the Gulf Oil Corporation. This rumor was promptly denied by officials of both the Gulf and of our company, and is absolutely false.

Your request for more detail with reference to our activities is rather difficult to comply with, as the question is so general that we would hardly know where to begin. May I suggest that you ask whatever specific questions you desire, and I assure you that we will furnish you all of the data you may require.

[fol. 22] Our Pipe Line Department is now preparing the drawing which you have requested, showing the location of the gasoline line, and this will be forwarded you in a few days.

You state that you understand that we run crude oil in the southern part of our gasoline line. This is not correct, as no part of the gasoline line is used for crude oil transportation.

You also ask for any data which will "assist in deciding whether the Cimarron Valley Pipe Line Company should be classed as a common carrier." As we stated before, the Cimarron Valley Pipe Line Company owns only crude oil lines, none of which are interstate, all being located in Oklahoma.

The Champlin Refining Company owns and operates the gasoline line from Enid to Superior, which is entirely separate, both in ownership and use, from the crude lines of the Cimarron Valley Pipe Line Company.

very truly yours, —— ——.

NS-f.

cc: Mr. George Leverton, Office.
Mr. E. G. Wilmoth, Office.

Interstate Commerce Commission

Bureau of Valuation

Washington LH:ECJ

In Reply Address Interstate Commerce Commission, Bureau of Valuation

February 27, 1936.

Subject: Champlin Refining Company, Cimarron Valley Pipe Line Company

Mr. Nathan Scarritt, Legal Department, Champlin Refining Company, Enid, Oklahoma.

DEAR SIR:

This will acknowledge receipt of your letter of the [fol. 23] 22nd instant, in reply to our letter of January 28, regarding the two above companies' pipe lines. It is admitted that our letter was perhaps somewhat vague. What our Commission desires to know is, whether either of the above pipe line companies (possibly both) is doing interstate commerce business. It is noted that you request that we ask questions rather than have you make a broad statement, and with this in view, we are asking the following:

1. We know that the Cimarron Valley Pipe Line Company runs crude oil and is located in its entirety within the State of Oklahoma. The question is, from where does it run, pick up its oil, and at what point is the oil delivered?

2. Does the Cimarron Valley Pipe Line Company, which runs crude oil, deliver same to another pipe line company, or does it deliver it to a refining company? If to a pipe line company, please give the name of same and the location of the point of delivery.

3. If the crude oil is delivered to a refining company, designate the location and the name of the refining company and what affiliations it may have with either of the above named companies.

4. The Champlin Refining Company, we know, owns a pipe line used in transporting gasoline from Enid, Oklahoma, to Superior, Nebraska. The question is, from whom

does this company receive the gasoline so transported (receipt being at Enid) and to what company or companies does this refining company make delivery of the gasoline at Superior?

This office desires to cause no undue burden or expense to either of the two above companies. We are simply trying to find out facts as to whether they are doing interstate commerce business, either independently or through connecting pipe lines.

We have heard from the Gulf Oil Corporation that [fol. 24] the rumor of a merger or affiliation of your company with theirs is untrue.

We note that you are preparing a map (blueprint of which will be furnished us) showing the location of the gasoline line.

We naturally knew that you did not run crude oil in the southern part of your gasoline pipe lines and that the two companies are separate and distinct.

As stated above, we are trying to find out the facts with as little expense as possible to both your company and ourselves, and we should appreciate answers to the above questions and any other explanations you care to offer.

Yours very truly, C. H. Spencer, Head Valuation Engineer.

March 4, 1936.

Interstate Commerce Commission, Bureau of Valuation, Washington, D. C.

Attention: Mr. C. H. Spencer, Head Valuation Engineer

Dear Sir:

Replying to your letter of February 27, 1936, we herewith submit answers to your questions as follows:

1. The lines of the Cimarron Valley Pipe Line Company run from Enid, Oklahoma, to termini in various oil fields of this state, to-wit:

Oklahoma City field (Oklahoma County, Oklahoma),
Seminole field (Seminole County, Oklahoma),
Wewoka field (Seminole County, Oklahoma),
Pharoah field (Okfuskee County, Oklahoma), and
Tonkawa field (Kay County, Oklahoma).

The oil is picked up from leases or tanks in the oil fields above named. The greatest percentage of oil belongs [fol. 25] to Champlin Refining Company and is transported to the refinery of said company at Enid, Oklahoma. In addition to this oil, the Cimarron Valley Pipe Line Company every year transports a small quantity of oil for other local refineries, located in Oklahoma. For example, in 1935, the total oil transported by the Cimarron Valley Pipe Line Company, together with consignees, was as follows:

Consignee	Location of Consignee	Number of Barrels Transported
Champlin Refining Co.,	Enid, Oklahoma	3,454,818
Cushing Refining and Gasoline Company	Blackwell, Oklahoma, and Cushing Oklahoma	228,189
Eason Oil Company	Enid, Oklahoma	58,334
Omar Refining Co.	Garber, Oklahoma	842,779

All of the above named consignees are located on the lines of the Cimarron Valley Pipe Line Company and the oil is delivered directly to their refineries, with the exception of the Cushing Refining and Gasoline Company. This company has two refineries, one located at Blackwell, Oklahoma, the other at Cushing, Oklahoma. Deliveries are made to their Cushing refinery from our line at Section Four (4), Township Seventeen (17) North, Range Three (3) East, Payne County, Oklahoma, and to their Blackwell refinery at Section Twenty-three (23), Township Twenty-four (24) North, Range One (1) West, Noble County, Oklahoma.

All oil transported for these various companies is used by them for refining in their local plants.

2. All oil is delivered to refining companies as above set forth.

3. The names of the consignees are given under paragraph 1. The Cimarron Valley Pipe Line Company is a [fol. 26] subsidiary of the Champlin Refining Company, but has no affiliation with any of the other consignees.

4. The Champlin Refining Company does not receive the gasoline from any other company. Nor does it deliver

the gasoline to any other company. It merely transports its own gasoline as it comes from its refinery at Enid, to its own tanks in Hutchinson and Superior. Sales are made to the trade out of our terminals at these locations.

Very truly yours, —— ——.

NS-f.

cc: Mr. George Leverton, Office; Mr. E. G. Wilmoth, Office.

Interstate Commerce Commission, Bureau of Valuation, Washington

LH:DFG.

In Reply Address Interstate Commerce Commission, Bureau of Valuation

March 9, 1936.

Subject: Champlin Refining Company, Cimarron Valley Pipe Line Company

Mr. Nathan Scarritt, Attorney, Legal Department, Champlin Refining Company, Enid, Oklahoma.

Dear Sir:

We have your letter, dated March 4, 1936, giving us the information asked for in our letter, dated February 27, regarding the Champlin Refining Company and the Cimarron Valley Pipe Line Company.

We thank you for giving us this necessary data.

Yours very truly, C. H. Spencer, Head Valuation Engineer.

[fol. 27] Interstate Commerce Commission
Bureau of Statistics
Washington April 17, 1936

Mr. H. H. Champlin, President, Champlin Refining Co., Enid, Oklahoma.

Dear Sir:

It would appear that the requirement of this Commission as to the filing of annual reports has been overlooked

by your office, in view of the fact that the report for 1935 has not yet been received, although it should have reached this Bureau by March 31.

It is desired that you take immediate steps to provide for the filing of the returns without further undue delay and that you inform this office within the next few days as to the probable date by which the mailing will be made.

Very truly yours, M. O. Lorenz, Director of Statistics, By E. F. B.

April 21, 1936

Re: Cimarron Valley Pipe Line Company valuation of property.

Interstate Commerce Commission, Bureau of Statistics, Washington, D. C.

Attention: Mr. M. O. Lorenz, Director of Statistics

GENTLEMEN:

Your letter of April 17, 1936, addressed to Mr. H. H. Champlin, has been referred to us for reply.

According to our understanding the report which you mention is required only of companies which are engaged in such activities as would make them subject to the Federal transportation act. This company is not, in our opinion, engaged in any such activities, and the report was not prepared for that reason.

[fol. 28] On January 10, 1936, Mr. C. H. Spencer, Head Valuation Engineer of your Commission, wrote us, inquiring as to the gasoline pipe line which we recently constructed from Enid, Oklahoma, to Hutchinson, Kansas, and Superior, Nebraska. We wrote Mr. Spencer on January 15, 1936, explaining that this line was being used entirely as a plant facility, A copy of letter is enclosed herewith.

In response to successive inquiries for additional data, we wrote Mr. Spencer a second letter on February 22, 1936, and again on March 4, 1936.

We have not received any additional demand from Mr. Spencer and assume that his department has accepted our statement that the activities of our company do not come under the terms of the transportation act.

If you care to investigate this question further, however, we shall gladly supply you with such additional data as you may require.

Very truly yours, —— ——, NS:b, cc: Leverton, Wilmoth.

Interstate Commerce Commission
Bureau of Statistics
Washington

EFB:RZR
S 559530

April 27, 1936

Mr. Nathan Scarritt, Attorney, Champlin Refining Company, Enid, Oklahoma.

DEAR SIR:

Receipt is acknowledged of your letter of April 21, 1936, concerning the operations of the Champlin Refining Company.

It is understood from the information furnished that respondent uses this pipe line as a plant facility only; that [fol. 29] it has never transported or offered to transport the products of any other person, firm, or corporation through this line, either as a common carrier or by contract; and that it files no tariffs with this Commission.

In view of these conditions, would advise that an annual report need not be filed with this Commission for the year 1935, and the report forms P which were sent to you should be returned to this Bureau. For your convenience in returning these forms, I am enclosing an addressed label which may be used and requires no postage.

Very truly yours, M. O. Lorenz, Director of Statistics, By EFB. Enclosure.

April 30, 1936

Interstate Commerce Commission, Bureau of Statistics, Washington, D. C.

Attention: Mr. M. O. Lorenz, Director of Statistics.

GENTLEMEN:

We have your letter of April 27, 1936, and are returning herewith the report forms P in accordance with your request.

Very truly yours, ——. NS:b.

Interstate Commerce Commission
Bureau of Valuation
Washington

In Reply Address Interstate Commerce Commission,
Bureau of Valuation

September 19, 1939

Subject: Construction of 280 miles of gasoline line from Superior, Nebraska, to Sioux City, Iowa.

[fol. 30] Cimarron Valley Pipe Line Company, Enid, Oklahoma.

GENTLEMEN:

In connection with our work of bringing the valuation of pipe lines to date, we are very much interested in current data on construction, and should appreciate it if you could furnish us with a copy of the contract pertaining to the pipe line construction on the above mentioned project.

Very truly yours, Louis Hood, Head Valuation Engineer. JEH:ECJ

September 23, 1939

Re: Construction of 280 miles of gasoline line from Superior, Nebraska, to Sioux City, Iowa.

Interstate Commerce Commission, Bureau of Valuation, Washington, D. C.

Attention: Mr. Louis Hood, Head Valuation Engineer

GENTLEMEN:

Pursuant to the request contained in your letter of September 19, 1939, we are sending herewith a copy of our contract pertaining to the construction of the above mentioned pipe line.

This line will be constructed, owned and operated by the Champlin Refining Company and will be used exclusively for the transportation of our own products.

We assume, therefore, that it will be conceded that this line does not come under the terms of the Transportation Act, particularly since your letter indicates that a copy

of our contract was requested merely to be helpful to you in the valuation of other lines.

With this understanding we are glad to accommodate you by forwarding the contract.

Very truly yours, —— NS:f. Enc.

[fol. 31] Interstate Commerce Commission

Bureau of Valuation

Washington

In Reply Address Interstate Commerce Commission
Bureau of Valuation

September 26, 1939.

Subject: Construction of 280 miles of gasoline line from Superior, Nebraska, to Sioux City, Iowa

Mr. Nathan Scarritt, Champlin Refining Company, Enid, Oklahoma.

Dear Sir:

This will acknowledge receipt of and thank you for your letter of September 23, 1939, transmitting copy of the contract pertaining to the construction of the above mentioned pipe line.

Very truly yours, Louis Hood, Head Valuation Engineer.

JEH:ECJ.

Interstate Commerce Commission

Bureau of Valuation

Washington

Office of the Director. November 3, 1939.

Subject: Champlin Refining Company (informal conference on common carrier status)

Mr. Nathan Scarritt, Attorney, Champlin Refining Company, Enid, Oklahoma.

Dear Sir:

In February, 1936, our Engineering Section of this Bureau had some correspondence with your company relative

to whether its operation was that of interstate of intrastate. In your letter of March 4th, last paragraph, you take the position that the pipe line in question is a plant facility even though it extends from Enid, Oklahoma, to Superior, Nebr.

Recently we understand from reading the "Oil & Gas [fol. 32] Journal" that you contemplated extending this gasoline line to Sioux City, Iowa, and perhaps at this time the line has been completed.

Since there may be many phases of the operation of your pipe line with which we are not acquainted, we are asking if it is possible for your company to send representatives here to Washington for an informal, across-the-table conference. These conferences always prove more satisfactory than trying to obtain information by correspondence. Believing that your company will avail itself of our invitation to come to Washington, we are setting December 4th, as the date, in my office, Room 7144, Interstate Commerce Commission Building, located at 12th & Constitution Avenue, at 9:30 A. M.

You have already forwarded us a photostat of your line extending from the Enid pumping station to Superior, Nebr., and if you have an alignment map showing your line from Superior to Sioux City, we would appreciate your bringing it along with you. Some questions may arise concerning the Cimarron Valley Pipe Line which gathers and delivers crude oil to the refinery at Enid, so if you avail yourselves of our invitation to come to Washington, please come prepared to discuss both companies. In the event the date set is not convenient, kindly advise, naming a date which will be satisfactory.

Yours truly, E. J. Lewis, Director.

November 8, 1939.

Mr. E. J. Lewis, Director, Bureau of Valuations, Interstate Commerce Commission, Washington, D. C.

Dear Sir:

This will acknowledge receipt of your letter of November 3, 1939, and we assure you that we shall cooperate with you in every way in assisting you to obtain any data which you [fol. 33] may require as to our gasoline pipe line. As you state, this line was completed in 1936 from Enid, Oklahoma,

to Superior, Nebraska, and is now being extended to Rock Rapids, Iowa. We do not anticipate that the extension will be completed until the first of the year, and perhaps later, depending upon weather conditions.

As to whether our line comes under the jurisdiction of your Commission, we assume that this proposition resolves itself into the simple question of fact, whether our line is or is not a common carrier.

As we read the Transportation Act, it covers only pipe lines which are common carriers. If we come within this classification we are plainly under the jurisdiction of the Commission. If we are not a common carrier, I think you will agree that we are, just as clearly, not within the terms of the act.

This question should not be difficult of decision in our case. The fact is that our company has never, since the inception of this line, transported any products through the line excepting our own. We have never transported any products through the line for any other person, firm or corporation, nor have we offered to do so. This will continue to be our policy after the line is extended.

It seems that the law is so well fixed that a company which transports only its own products is not a common carrier and cannot, under the Constitution, be made one, that the only question in our case will be a matter of proof, *i. e.*, whether we can substantiate our assertion that we have never transported or offered to transport for others.

If you agree with us that the common carrier question will be decisive, we are wondering whether you would not wish to send a representative to our office to check the records of our shipments through this line from its beginning to the present time, before we appear in Washington for a conference.

It has occurred to us that the most we could do at a con- [fol. 34] ference would be to reiterate this assertion, and you would doubtless still desire that proof of the statement be made from our records.

As to the Cimarron Valley Pipe Line Company, the pipe lines of that company are entirely within the State of Oklahoma. It does not transport any oil, directly or indirectly, from or within any other state. This is another matter which you might desire your field representative to check.

We make the foregoing suggestion merely in the interest of saving time and expense for both of us. As you know,

any trip to Washington from this distance means that one or two needed men must be out of their office for a week or ten days and this, together with the cost of the trip, adds considerably to our expense of doing business. Therefore, while we will be very happy to respond to your invitation, we merely wish to ask your co-operation in lightening the burden on our time and expense as much as possible. In this case, it frankly appears to us that the only point which could be in issue is the truth of our statements above given, that the truth of these statements could be proved from our records here, and that a duplication of conferences might be avoided if your representative might satisfy himself as to this proof before a conference is held.

We will appreciate your advising us your view and assure you that we shall be glad to comply with any suggestion you may make.

Very truly yours, —— ——.

NS:f.

Interstate Commerce Commission

Bureau of Valuation

Washington

Office of the Director. November 13, 1939.

Subject: Champlin Refining Company (informal conference on common carrier status)

[fol. 35] Mr. Nathan Scarritt, Attorney, Champlin Refining Company, Enid, Oklahoma.

Dear Sir: Receipt is acknowledged of your favor of the 8th regarding our invitation to the Champlin Refining Company's representatives to be present at an informal across-the-table conference, which was set for 9:30 A. M. Monday morning, December 4th; regarding the question as to whether the pipe lines owned by the Champlin Refining Company were subject to the jurisdiction of this Commission.

We note that you offer certain objections to sending one or two of your most needed men to attend a conference in Washington, evidently with the thought in mind that this

conference would take your men away from your holdings from a week to ten days, together with the cost of the trip. This is to advise that the informal conference would not take over an hour and a half to two hours time. This has been our experience in dealing with other small pipe line properties, with the further thought, as we expressed to you in our letter of the 3rd, we have found by personal contact, that a more satisfactory result was obtained than by undertaking to secure data by correspondence, and with the still further thought that there may be many features of the operations of your pipe line with which we are not acquainted.

I wish also to say to your people that it has never been the intention of this Commission, or this Bureau, to impose any undue burden, not only on large pipe line companies, but especially the smaller ones. We realize at the present time that money is very scarce not only possibly with your company, but with our Bureau; and we have always made it a point to go as easy as possible, and help the pipe lines, whether intrastate or interstate, as much as possible, and you can rest assured that your representatives will receive the same courtesies.

[fol. 36] This office appreciates very much your offer to have an accountant check your books not only regarding the Champlain Refining Company's gasoline movements, but also the books of the Cimraron Valley Pipe Line Company's oil movements. However, at our conference we will accept your word as to just what the two companies are engaged in, and after the conference, if we are still in doubt we may avail ourselves of your kind offer.

I am informed that the United States Supreme Court yesterday, November 13th, handed down its decision in the Valvoline Oil Case, which was to the effect that the pipe lines owned by the Valvoline Oil Company are subject to the jurisdiction of the Interstate Commerce Commission.

We hope that your representatives will avail themselves of our offer to be present on December 4th.

Yours truly, E. J. Lewis, Director.

The Supreme Court has just handed down its decision in the Valvoline case. I have had it mimeographed and enclose a copy. EJL.

Postal Telegraph

Enid Oklahoma
December 1 1939

E. J. Lewis Director, Bureau of Valuation, Interstate Commerce Commission, Washington D C.

Representative our company will meet you December fourth pursuant your invitation.

Champlin Refining Company. NSS:f. CHG: Ch. Ref Co.

[fol. 37] December 7, 1939

Subject: Champlin Refining Company, Cimarron Valley Pipe Line Company

Memorandum to Mr. Hood

In response to Director Lewis's Letter of November 3, 1939, representatives of the above carriers met with representatives of the bureau, in the Director's office on December 4, 1939, at 9:30 A. M.

The carriers were represented by Mr. J. N. Champlin and Mr. G. E. Leverton.

The bureau was represented by Director Lewis and Messrs. Farrell, Hood and Shields.

At the outset of the meeting, Director Lewis pointed out that this was an informal discussion called by the bureau in order that more complete information regarding the physical and operating characteristics of the properties under consideration might be available for study, and stated that to attempt to obtain by correspondence all of the needed information would result in long delays and unnecessary expense, in addition to the possibility of misunderstanding.

In response to a series of questions by Mr. Hood and others present, the following information was developed:

Cimarron Valley Pipe Line Company.

This is a crude oil gathering line, wholly within the State of Oklahoma, and its function is to transport the crude oil to the refinery of the Champlin interests at Enid, Oklahoma.

The system consists of some 391 miles of line, there being some 113 miles of 8-in. and 113 miles of 6-in. pipe, the balance being of smaller diameter.

The oil is generally received into the line at the producer's stock tanks and the title to the oil rests in the Champlin Refining Company, being either produced by it from its own wells or purchased from other producers. The [fol. 38] Cimarron Valley Pipe Line Company owns no producing property.

Some 4,000,000 barrels of oil are transported per annum to the Champlin refinery. The Cimarron Valley pipe line is connected to from 125 to 150 leases and there are in all some 600 to 700 wells from which oil is produced that are served by the pipe line.

In addition to the oil which the Champlin Refining Company buys and which is transported through the line, there is another source of oil through the trading agreements with Mid-Continent Company. In the Osage field the Champlin has producing properties but no connection with the Cimarron Valley pipe line. Here the Champlin production is turned over to the Cosden pipe line of the Mid-Continental Company and is transported by that line to the Mid-Continent's Tulsa refinery where it is processed. In turn, the Mid-Continent turns over a like amount of oil from its producing properties in the Seminole field to the Cimarron Valley Pipe Line Company which transports it to the Enid refinery for the account of the Champlin refinery.

At the present time, the carrier has no physical connection with any other pipe line company. There have been a few times, several years ago, when deliveries were made to the Texas-Empire Pipe Line Company but at the present time there is no business of that kind.

In recent years, the Cimarron Valley Pipe Line Company has made no deliveries to any other pipe lines or refineries. At one time it did deliver some oil from the Oklahoma City field to the Cushing Refining and Gasoline Company at Cushing, Oklahoma, and to the Garber Refining Company at Garber, Oklahoma.

During the conference, it developed that the Enid refinery operates entirely on Oklahoma crude, all of which is transported by the Cimarron Valley Pipe Line Company.

The Cimarron Valley Pipe Line Company is a New Mexico corporation, licensed to do business in Oklahoma, [fol. 39] and is under the jurisdiction of the Corporation Commission of Oklahoma.

In response to questioning as to whether the Cimarron Valley Pipe Line Company had ever exercised the right of eminent domain, both Mr. Champlin and Mr. Leverton replied that, as far as they knew, it never had done so.

The foregoing completed the discussion of the Cimarron Valley Pipe Line Company. The files of the Engineering Section contain some information in addition to that contained herein, which has from time to time been furnished by the carrier.

Champlin Refining Company

The pipe line properties of the Champlin Refining Company consist of a 256-mile 6-in. line, running from the Enid refinery to Superior, Nebraska, constructed in the spring of 1935. An extension (some 280 miles of 6-in. line) is now under construction from Superior, Nebraska, to Rock Rapids, Iowa. The line will be completed in about two weeks and the completion of the terminal facilities is scheduled in about two months.

Along the line are terminals at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa, with storage facilities of 140,000, 190,000 and 330,000 barrels, respectively. Each of the terminals has tank car and truck loading facilities.

The line capacity was not discussed. However, Mr. Champlin said he hoped in the first year of operation to deliver out of the Rock Rapids terminal some 1,500 to 2,000 barrels a day.

The line transports both gasoline (Presto being the trade name of the leaded gasoline) and kerosene, the latter comprising 8 to 10 per cent of the movement. As above noted, the products move to storage tanks and the various terminals and are distributed therefrom by private trucks or tank cars to points within and without the state. Mr. Champlin said the company owns no gasoline trucks.

[fol. 40] The pumping stations are located at Enid, Oklahoma, Bluff City and Hutchinson, Kansas, and Superior, Nebraska, and a station on the new line between Superior, Nebraska, and Rock Rapids, Iowa. They are powered by Goulds centrifugal pumps, motor driven.

The representatives for the carrier stated that the destination of gasoline was not known when the product left Enid; they attempt to maintain an adequate supply at terminal points to meet the demands of the trade; they may have price contracts with particular companies to supply their requirements on an annual basis, prices to be based on certain trade journals, but do not have contracts for a definitely specified quantity; their business is with the small jobber and they have no contract or affiliations with the larger companies to supply their demands; even when they have contracts to supply yearly requirements with small jobbers, there is no definite point of delivery for the product.

Mr. Farrell pointed out that the quantity of business done was of no particular interest to him from the legal side of the matter, and in a series of questions brought out that the refinery operated entirely on crude produced in Oklahoma and delivered to it by the Cimarron Valley pipe line; that while some of the oil purchased by it was purchased from companies owning wells in other states, the oil delivered was all Oklahoma crude; that the Champlin Refining Company did not do business with any other pipe line company than the Cimarron Valley Pipe Line Company and the Cosden Pipe Line Company; and further that the Champlin Refining Company, in the construction of its pipe lines, had never exercised the right of eminent domain or resorted to condemnation proceedings.

During the conference, reference was made by Mr. Leverton to an informal ruling in the case of the Superior, Nebraska, terminal that the oil came to rest at that point and was subject to a state tax assessed against the Champlin Refining Company.

[fol. 41] It was agreed that a copy of this statement would be furnished Mr. Champlin, with the request that he comment on the same or furnish any additional facts he deemed pertinent.

R. W. Shields.

RWS:ECJ.

Interstate Commerce Commission

Bureau of Valuation

Washington

In Reply Address Interstate Commerce Commission Bureau of Valuation

December 9, 1939.

Subject: Cimarron Valley Pipe Line Company, Champlin Refining Company

Mr. J. N. Champlin, Vice President, Champlin Refining Company, Enid, Oklahoma.

DEAR SIR:

In accordance with our statement to you on December 4, 1939, at which time you attended a conference in Director Lewis' office, when the physical and operating characteristic of the above companies were discussed, there is attached hereto a brief record of the discussion.

Please feel free to comment on or amplify this statement.

Your cooperation in attending the conference and supplying the information is much appreciated.

Yours very truly, Louis Hood, Head Valuation Engineer.

RWS:ECJ
Attachment

[fol. 42] December 19, 1939.

Re: Cimarron Valley Pipe Line Company, Champlin Refining Company

Interstate Commerce Commission, Bureau of Valuation, Washington, D. C.

Attention: Mr. Louis Hood, Head Valuation Engineer

GENTLEMEN:

This will acknowledge receipt of your letter of December 9, 1939, together with a copy of the record of our discussion of December 4th with reference to the pipe lines of the above named companies.

We find no fault with any of the statements contained in this record, but believe that a few items have been inadvertently omitted.

For example, on page 3, we respectfully suggest the following additional paragraphs:

> "It was also stated that this line had been used from its inception entirely for the transportation of the petroleum products manufactured by Champlin, from its Enid refinery to its own respective terminals. The line has never been used or offered for the use of transporting the products of any other company, having been built solely for the transportation of Champlin products and having neither the capacity nor other facilities necessary to transport for others.
>
> "It was also stated that the company had never exercised the power of eminent domain in acquiring right-of-way for the line. Mr. Hood observed in this connection that he understood that the company had been forced to change the route of the line several times because landowners had refused to grant right-of-way."

We also suggest that the following be added to the second paragraph commencing on page 4:

> "Mr. Hood observed that the Motor Carrier Bureau [fol. 43] of the Interstate Commerce Commission had made a similar ruling in a case involving the Champlin terminal at Superior, Nebraska. The Commission held in this case that the interstate movement stopped at the terminal, and that subsequent motor carriage to Nebraska destinations was not a part of the interstate transportation."

The additional statements above quoted are true and correct, and according to my recollection, formed a part of the discussion.

I, therefore, believe that they should be incorporated in the record, and would be pleased if you would advise me whether you agree.

Very truly yours, —— ——.

JNC:f.

Interstate Commerce Commission

Bureau of Valuation

Washington

In Reply Address Interstate Commerce Commission Bureau of Valuation

December 22, 1939.

Subject: Cimarron Valley Pipe Line Company, Champlin Refining Company

Mr. J. N. Champlin, Vice President, Champlin Refining Company, Enid, Oklahoma.

Dear Sir:

This will acknowledge receipt of your letter of December 19, 1939, in which you suggest that certain additional matter be added to the minutes of our conference held on December 4.

We have no objection to your suggestion and will include with our minutes a copy of your letter and this acknowledgment.

[fol. 44] We trust this procedure will be satisfactory to you.

Yours very truly, Louis Hood, Head Valuation Engineer.

RWS:ECJ.

Copy to: Director E. I. Lewis, Mr. P. J. Farrell, Mr. R. W. Shields.

Copy of carrier's letter to each.

Interstate Commerce Commission

Bureau of Valuation

Washington

In Reply Address Interstate Commerce Commission Bureau of Valuation

May 2, 1940.

Subject: Champlin Refining Company gasoline line from Superior, Nebraska, to Rock Rapids, Iowa

Mr. J. N. Champlin, Vice President, Champlin Refining Company, Enid, Oklahoma.

DEAR SIR:

Under date of September 23, 1939, your attorney, Mr. Nathan Scarritt, furnished us, for use in our cost data work, a copy of the contract covering the construction of your 280-mile extension to Rock Rapids, Iowa.

It is now our wish to obtain, for the same use a copy of the purchase order covering the 6-inch pipe used in the construction of this line.

If consistent with your policy we should very much appreciate receiving these data.

Very truly yours, Louis Hood, Head Valuation Engineer.

RWS:ECJ.

[fol. 45] May 15, 1940.

Interstate Commerce Commission, Bureau of Valuation, Washington, D. C.

Attention: Mr. Louis Hood, Head Valuation Engineer

GENTLEMEN:

Pursuant to your letter of May 2, 1940, to Mr. J. N. Champlin, Vice-President of Champlin Refining Company, we are enclosing herewith photostatic copy of purchase order covering the 6-inch pipe used in the construction of our 280-mile extension of pipe line to Rock Rapids, Iowa.

Very truly yours, ——— ———.

NS:f.

Enc.

Interstate Commerce Commission

Bureau of Valuation

Washington

May 15, 1941.

Office of the Director

Subject: Champlin Refining Company, Valuation of Property

Mr. H. H. Champlin, President, Champlin Refining Company, Enid, Oklahoma.

Dear Sir:

In accordance with the enclosed order of the Interstate Commerce Commission, dated April 12, 1935, you are requested to *prepare in duplicate* and *file* with this Commission, not later than September 1, 1941, *the original copy* of a complete inventory of the pipe line property of the Champlin Refining Company, except land, showing the quantities, units, classes, kinds, and condition thereof.

The inventory shall be made as of the date of valuation already set for the property, December 31, 1940, and shall conform with the enclosed instructions and sample notes.

[fol. 46] Kindly acknowledge receipt of this letter and enclosures.

Yours very truly, Ernest J. Lewis, Director.

Enclos-es.

Copy to Mr. Louis Hood, Mr. R. A. Lacey, Mr. A. B. Manly.

Interstate Commerce Commission
Bureau of Valuation
Washington

Office of the Director

May 15, 1941.

Subject: Champlin Refining Company Valuation of Property.

Mr. H. H. Champlin, President, Champlin Refining Company, Enid, Oklahoma.

Dear Sir:

You are hereby notified that the Interstate Commerce Commission has set December 31, 1940, as the date of valua-

tion of the pipe line property of the Champlin Refining Company.

There is enclosed a copy of the Commission's Valuation Order No. 26, Revised Issue, effective December 31, 1934, prescribing instructions to govern the preparation and filing of maps, charts, and schedules. Although the order requires submitting this information within sixty days from date of valuation, in your case we will consider September 1, 1941, as the date for filing. On page 15, Section E, the years 1935-1940 should be substituted for the years 1929-1943. You will be notified of any additional requirements of your company that the Commission considers essential in arriving at a valuation of the property.

Mr. Louis Hood, Head Valuation Engineer, will have charge of engineering matters; Mr. R. A. Lacy, Head Auditor Property Changes, will have charge of accounting matters; and Mr. A. B. Manly, Head Land Appraiser, will [fol. 47] have charge of land matters. These officials will communicate further with you as to all details.

Yours very truly, Ernest J. Lewis, Director.

Enclosure.

Copy to Mr. Louis Hood, Mr. R. A. Lacy, Mr. A. B. Manly.

Interstate Commerce Commission
Bureau of Valuation
Washington

In Reply Address Interstate Commerce Commission Bureau of Valuation.

May 18, 1940.

Subject: Champlin Refining Company.

Mr. Nathan Scarritt, Legal Department, Champlin Refining Company, Enid, Oklahoma.

Dear Sir:

This will acknowledge receipt of your letter of May 15, 1940, with which you enclose photostatic copy of purchase order covering the 6-inch pipe used in the construction of your 280-mile extension to Rock Rapids, Iowa.

We thank you for this information.

Yours very truly, Louis Hood, Head Valuation Engineer.

RWS:ECJ

[fol. 48] Interstate Commerce Commission
Bureau of Valuation
Washington

In Reply Address Interstate Commerce Commission Bureau of Valuation.

3-PL
June 7, 1941.

Mr. H. H. Champlin, President, Champlin Refining Company, Enid, Okla.

Dear Sir:

Referring to the letter sent you by the Director of the Bureau of Valuation under date of May 15, 1941, concerning the return you are to make to Valuation Order No. 26, in connection with the valuation of your property as of December 31, 1940. Such order, when fully complied with, will make available, among other things, complete details of construction costs covered by the following primary accounts for common-carrier property:

As provided for in Schedule C

Account Nos.	
101, 151, 171	Land

As provided for in Schedule D

Account Nos.	
107, 157	Boilers
158, 158	Pumping equipment
109, 159, 179	Machine tool and machinery
110, 160	Other station equipment
112, 162	Delivery facilities
115, 165, 185	Vehicles and other work equipment
116, 166, 186	Other property

I understand that your company has available details of all construction costs and it is our purpose to include in our accounting report for your company a complete statement of original cost to date of valuation by primary accounts. I would therefore request that you prepare additional statements covering charges to each of the other primary accounts as listed hereunder:

[fol. 49]

Account Nos.	*Title*
102, 152	Rights-of-way
103, 153	Line pipe
104, 154	Line-pipe fittings
105, 155	Pipe line construction
106, 156, 176	Buildings
111, 161	Oil tanks
113, 163, 183	Communication systems
114, 164, 184	Office furniture and equipment

With respect to the primary accounts enumerated immediately above, no special form of reporting has been provided. We would suggest that you give us such detail as can be readily abstracted from your records, somewhat in the manner outlined in memorandum attached. In general, all cost should be broken down according to the several valuation sections established for the property of your company and concerning which you have been advised by Mr. Louis Hood, Head Valuation Engineer. It is requested that preparation of the special statements be started immediately after the returns to Valuation Order No. 26, Revised Issue, have been completed, in order that these and the returns may be checked at one time when our accountants arrive at your office to make an examination of the records and accounts.

Please acknowledge receipt.

Yours truly, Robert A. Lacy, Head Auditor Property Changes.

Att.

Account Nos. 102, 152; Title, Rights-of-way; Requirements: Show amounts paid for rights-of-way and expenses in connection with obtaining such rights-of-way collectively; if there have been charged to these accounts other amounts such as costs for gates and fences, etc., these should be separately shown.

Account Nos. 103, 153; Title, Line Pipe; Requirements: [fol. 50] Show distribution of costs, by sizes and aggregate lengths (or weights) depending on how such costs are carried in construction records.

Account Nos. 104, 154; Title, Line-pipe fittings; Requirements: It is recognized that these accounts may be made up of numerous small items which may be listed according to such distribution as can be obtained from construction records without an undue expenditure of time and effort.

Account Nos. 105, 155; Title, Pipe-line construction; Requirements: Requirements under "Line-pipe fittings" will generally apply, except that if any such construction was performed under contract the costs therefor should be segregated and copies of construction contracts be supplied in support of same; if there has been charged to these accounts amounts for interest during construction, engineering, etc., details should be furnished.

Account Nos. 106, 156, 176; Title, Buildings; Requirements: Show separately according to location and by company number, the cost of each building with foundation, fixtures and appurtenances; costs for grading grounds, constructing si lewalks, roads and other improvements charged to these accounts as more specifically set forth in Note B of Buildings accounts in the Uniform System of Accounts for Pipe Lines, should be segregated to the extent shown by construction records.

Account Nos. 111, 161; Title, Oil tanks; Requirements: Show the location, company number, capacity in barrels and kind (steel or earthen) of each tank with individual cost thereof, including appurtenances.

Account Nos. 113, 163, 183; Title, Communication systems; Requirements: Costs for wire, poles, outside equipment and inside equipment (if any wires are located on poles owned by other companies or if wires owned by other companies are located on poles owned by the carrier, furnish particulars in separate statement).

[fol. 51] Account Nos. 114, 164, 184; Title, Office furni ure and equipment; Requirements: Costs, with location, of more important units; small items may be listed collectively.

Interstate Commerce Commission
Bureau of Valuation
Washington

Office of Director

July 7, 1941.

Mr. H. H. Champlin, President, Champlin Refining Company, Enid, Oklahoma.

Dear Sir:

On May 15, 1941, notice was served on you as President of the Champlin Refining Company that the Interstate

Commerce Commission had set December 31, 1940, as the date of valuation of the pipe line property of your company; and at the direction of the Commission we served Valuation Orders Nos. 26 and 27—instructions to govern the preparation and filing of maps, charts and schedules, and an inventory of the pipe line property.

September 1, 1941, was set as the date for filing. We would like to know what progress is being made in meeting the requirements of these orders.

We recall the conference we had on December 4, 1939, with Messrs. J. N. Champlin and G. E. Leverton, and would be glad to furnish any advice or assistance, if necessary, in connection with the submission of data required under the above-indicated orders of the Commission.

Yours truly, Ernest I. Lewis, Director.

July 14, 1941.

Mr. Ernest I. Lewis, Director, Bureau of Valuation, Interstate Commerce Commission, Washington, D. C.

Dear Sir:

Receipt is acknowledged of your letter of July 7th, addressed to Mr. Champlin.

[fol. 52] Within the next ten days we will have completed the preparation of all data available from our records and will promptly forward it to you.

Yours very truly, Champlin Refining Co., G. E. Leverton.

GEL-h.

[fols. 53-54] Exhibit "B" to petition omitted in printing. The entire valuation order appears at side folio 676.

[fol. 55] EXHIBIT "C" TO PETITION

Exhibit xii to Amended Petition.

Interstate Commerce Commission
Bureau of Valuation
Washington

Office of the Director

July 22, 1941.

Subject: Champlin Refining Company Valuation Orders Nos. 26 and 27.

Mr. Geo. E. Leverton, General Auditor, Champlin Refining Company, Enid, Oklahoma.

DEAR SIR:

Under date of July 18, 1941, you forwarded to this office the original copy of a report which you stated you had prepared in compliance with our letters of May 15, 1941, with which were enclosed copies of Valuation Orders Nos. 26 and 27, together with instructions and sample notes pertaining to the orders.

While the report which you have submitted is informative, it can in no sense be construed as a compliance with the valuation orders which have been served. We are, therefore returning the report herewith, together with additional copies of Valuation Orders Nos. 26 and 27.

You will recall that you attended a conference in my office on December 4, 1939, where these matters were informally discussed. It was my thought that as a result of our discussion at that time and in view of the detail nature of the instructions accompanying Valuation Orders Nos. 26 and 27, there would be no misunderstanding as to the requirements of these orders. However, that is apparently not the case and I now believe that to obviate any further delay or misunderstanding in regard to these matters, it is desirable for you to have your representative, who will be in responsible charge, of the preparation of the data [fols. 56-76] arrange to spend a day in our offices where he can familiarize himself with the various requirements through first-hand contact with our Engineering, Accounting and Land Sections.

We should appreciate being advised as to the earliest date such a conference can be arranged.

Yours very truly, (Signed) Ernest I. Lewis, Director.

Enclosures.

[fol. 77] APPENDIX "A" TO EXHIBIT "E" TO PETITION

INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Valuation of Pipe Line of Champlin Refining Company

Submitted May 20, 1942. Decided Dec. 14, 1942

The Champlin Refining Company found to be engaged in the transportation of petroleum products by pipe line in interstate commerce, and subject to the provisions of the Interstate Commerce Act

Harry O. Glasser and Samuel H. Horne for petitioner

REPORT OF THE COMMISSION

Division 2, Commissioners Aitchison, Splawn, and Alldredge

By Division 2:

On May 15, 1941, we served upon the Champlin Refining Company, hereinafter called the Champlin, copies of valuation orders Nos. 26 and 27, together with instructions and sample notes pertaining to the preparation and filing by common carriers by pipe line of information necessary for our use in the valuation of their pipe line properties. On July 18, 1941, the Champlin filed a report in purported compliance with these valuation orders. On July 22, 1941, that report was returned to the Champlin with the advice that such a report could not be considered as in compliance with the valuation orders and additional copies of valuation orders Nos. 26 and 27 were forwarded to the Champlin. Subsequently the Champlin filed a petition which, as later amended, alleges among other things, that the petitioner is not a common carrier and is not engaged in transportation within the meaning of the Interstate Commerce Act and asks that its status be determined. A hearing was held on the petition, briefs have been filed and oral argument heard.

The Champlin is a corporation of the State of New Mexico, authorized by its charter to produce, buy, sell, and [fol. 78] transport petroleum, to refine petroleum, and to buy, sell and deal in the refined products of petroleum. As of the date of the hearing it owned the various properties enumerated in the margin. The pipe line which the Champlin owns and operates is a 516-mile gasoline pipe line system consisting of welded 6-inch pipe extending from Enid, Okla., to Champlin, near Rock Rapids, Iowa. In connection with the pipe line the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kan., Superior, Neb., and Rock Rapids. The construction of the portion of the pipe line from Enid through Hutchinson to Superior, 256 miles, and the terminal facilities at Hutchinson and Superior, was completed in June, 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at the last named point were completed in May, 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids,

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(1) Approximately 149 oil wells on 53 leases in Oklahoma, 45 wells on 13 leases in Kansas, and 52 wells on 10 leases in Texas; (2) approximately 75,000 acres of undeveloped leases situated in Oklahoma, Kansas, Texas, New Mexico, Alabama and Illinois; (3) an oil refinery at Enid, Oklahoma, which processes approximately four and a half million barrels of crude oil annually producing a complete line of refined oil products; (4) all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of gathering lines used principally to transport the crude produced or purchased by the company from oil leases in Oklahoma to the Enid refinery; (5) seven hundred twenty-three (723) tank cars used to transport the products of the refinery to company bulk plants or to jobbers located in Oklahoma, Kansas, Colorado, Wyoming, North and South Dakota, Nebraska, Minnesota, Wisconsin, Iowa, Illinois, Missouri, Texas, and other states; (6) approximately 316 filling stations and 248 gasoline and oil bulk plants; (7) the products pipe line which is the subject of this report; (8) 5 motor trucks used to transport products from storage at Rock Rapids, Iowa, to points in that and other states, 3 trucks used to transport lubricat-

[fol. 79] 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

For some years prior to 1935 the business of the Champlin showed a steady decline, due to the construction of refineries in areas near former markets and the operation of pipe lines, barge lines, and transport trucks provided sources of supply near many customers, all of which was destructive of trade connections of the Champlin in the territory thus affected. The construction of the pipe line resulted in an upward trend in business of the Champlin so that by 1940 the company had reached a volume of business equal to the peak previously enjoyed. That the Champlin meets keen competition in the territory served is indicated by the fact that for the first six months of 1941, the total sales of the Champlin in the States of Colorado, Kansas, Nebraska, Iowa, Minnesota, and South Dakota, served by the pipe line equaled 3.5 per cent of the whole business of the petroleum industry in those states. This comparison is based on information furnished to the Champlin by the tax collection officials of the respective states.

Construction of the portion of the pipe line from Enid to Superior was undertaken by the Cimarron Valley Pipe Line Company, hereinafter referred to as the Cimarron Valley, which was then a common carrier operating wholly in the State of Oklahoma and a wholly owned subsidiary of the Champlin. The original purpose was to construct and operate a common carrier pipe line and a certificate to that effect was issued to the Cimarron Valley by the State of Kansas. In connection with the acquisition of right-of-way

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ing oil from the Enid, Oklahoma, refinery to the warehouses at the Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa, pipe line terminals, as well as Lincoln and Grand Island in Nebraska, and Denver in Colorado and various points in Kansas, 18 trucks used in the operation of the products pipe line and the operation and development of oil leases in Oklahoma, Kansas, and Texas, most of which occasionally transport materials for construction, operation and maintenance from one state to another; and (9) various other equipment used to promote the producing, purchasing and refining of crude oil and the marketing of the products thereof.

for this construction, the Cimarron Valley had instituted for condemnation suits against several individuals in separate district courts in the State of Kansas. When the line was nearing completion but before it was put into operation, a change in plans was decided upon which would eliminate the Cimarron Valley from operation outside of the State of Oklahoma in order that Champlin might complete construction of the line and operate it as a private products [fol. 80] line without assuming any of the burdens of a common carrier. On June 10, 1935, the Cimarron Valley executed a bill of sale to the Champlin and made assignment of all rights-of-way that had been acquired in the construction of the property transferred to the Champlin. The four condemnation suits were dismissed and satisfactory settlements made with the contesting land owners. Since that time the Cimarron Valley has had nothing to do with the further construction or operation of the Champlin.

The crude oil from which the products transported by the Champlin are produced is all originated in the State of Oklahoma and transported to the refinery at Enid by the Cimarron Valley. All of the petroleum products transported through the line are owned by the Champlin. The products are transported beyond the terminals either by rail or by common or contract carrier trucks to dealers and distributors. The Champlin operates five 3,750 gallon capacity transport trucks from the Rock Rapids terminals by which deliveries are made to company-owned outlets in North Central Iowa and Southern Minnesota, and to jobbers and dealers in the same territory. Other transport trucks, not owned, are employed by the Champlin to haul refined products from the refinery and the three terminals of the pipe line to the 248 bulk plants owned. From these bulk plants local dealers and consumers are served by tank wagons owned and operated by the Champlin. The Champlin operates approximately 316 retail filling stations in the territory served by the pipe line. The products are marketed at the terminals, sometimes by contract running for a definite period, at a delivered price which in addition to the f. o. b. charge at the Enid refinery includes a charge, called a differential, fixed at a sum which enables the Champlin to deliver these products at the pipe line terminal at a price which, added to the transportation costs beyond the terminal, equals the costs at the jobber's place of business of like products sold by competitors of the Champlin in the territory served. In

other words, the so-called differential is adjusted so that the [fol. 81] through charge to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destinations. *The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe line terminal.* Numerous adjustments have been made in the differentials from time to time as developments in the competitive situation made such changes necessary or expedient.

In disposing of the petroleum products produced by it at its refinery at Enid, the Champlin uses two types of sales; one is known as the spot-market or date of shipment sale, the other, or contract sale, is based on yearly contracts with its customers. The spot price of the product at Enid is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices as shown in the issue of the Thursday preceding date of shipment. These prices are made effective at 7:00 a. m. Friday morning and remain in force until the next succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The contract sales cover sales made to jobbers to cover their anticipated requirements for a specified or definite lenght of time. These contracts are made in writing and the record contains copies of the various forms of such contracts and accompanying papers necessary to show a complete transaction. Other sales are made to competing refiners and to brokers and in these instances the contracts are the same as those made with the jobbers except that the base or "Group 3" price is reduced so that the refiners and brokers are enabled to retain a commission and still sell the product at the delivered price prevailing in the competitive market.

The practical working out of the sales methods utilized by the Champlin may be described by the following facts presented for the record. On January 18, 1941, the Champlin entered into a contract with the Farmers Union [fol. 82] Co-op. Supply Company of Beatrice, Nebr., calling for the delivery by the Champlin of a maximum of 765,000 gallons of petroleum products named in the contract, at prices therein agreed upon, during the period of one year beginning February 4, 1941. A shipment of a tank-car load of gasoline from the Superior terminal of the Champlin

is indicative of the carrying out of this contract. This car contained 8,110 gallons of gasoline weighing 53,526 pounds and moved from Superior, October 11, 1941, destined to Beatrice, routed C. B. & Q. to Fairbury, Nebr., and C. R. I. & P. to destination, at a rate of 10.5 cents per 100 pounds, indicating a charge of $56.21 for the rail portion of the transportation, to be paid by the consignee direct to the railroads. The invoice of the Champlin to the consignee contains the following charges: $496.74, the cost at Enid of 8,110 gallons of the particular type of gasoline at the base price of $.06125 per gallon; $121.65 federal tax at the rate of 1.5 cents per gallon; and $81.10, the so-called differential, which in this instance equaled one cent per gallon. The total charge made by the Champlin for this carload of gasoline was $699.49. The item of $81.10 was described by a witness for the Champlin as representing the difference between the through railroad freight rate from Enid to Beatrice and the rail charge from Superior to Beatrice and was the total charge made by the Champlin for transporting this gasoline from Enid, including handling and all other items that go into the movement from the refinery to the pipe line terminal at Superior.

Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank car racks [fol. 83] and is not delivered directly from the pipe line in any instance; no tariffs have been filed with this Commission or with any state commission or regulatory body; the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line. Upon these facts the Champlin contends that its products line is a private pipe line devoted to its own use, that it is not a common carrier as defined in Section 1 of the Interstate Commerce Act, and that the use to which the pipe line is subjected by petitioner is not impressed with a public interest in any manner whatsoever. The evidence of record as outlined herein shows that the Champlin is a fully integrated oil company owning and operating, either di-

rectly or through its subsidiary the Cimarron Valley, every facility necessary for the production and the transportation of crude oil by pipe line, the refining of such crude oil, the transportation by pipe line of the products of its refinery, and the distribution thereof either through jobbers or directly to the consuming public.

In *Valvoline Oil Co. Petition in Valuation of Pipe Line*, 47 Val. Rep. 534, Division 1, described the legislative development of our jurisdiction over transportation of oil by pipe lines as follows:

> Persons or corporations engaged in the interstate transportation of oil by means of pipe lines were first brought within our jurisdiction by the Hepburn Act of June 29, 1906. By that act the provisions of Section 1 of the Act to Regulate Commerce were made applicable to "any corporation or any person or persons engaged in the transportation of oil or other commodity except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act." Except for minor revisions in the language, the provisions affecting pipe-line companies remain unchanged by sub- [fol. 84] sequent amendments. Section 1 of the act, as now in effect, reads in part as follows:
>
> (1) That the provisions of this part [Part I] shall apply to common carriers engaged in—
>
> (b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * * from one State * * * to any other State * * *.
>
> (3) The term "common carrier" as used in this part shall include all pipe line companies; * * *.

The same language is continued in the act as now in effect. In *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, the Supreme Court said "In the present act there is a change of language, but we perceive none in meaning." In that decision the Supreme Court affirmed on appeal a final decree of a three-judge District Court for the Western District of

Pennsylvania, dismissing a petition to enjoin and annul an order of this Commission made after determination by us that the Valvoline Oil Company is engaged in the transportation of oil by pipe line in interstate commerce and that it is a common carrier subject to the provisions of the Interstate Commerce Act.

Following the passage of the Hepburn Act and in view of conditions then existing, we instituted an investigation on our own motion into the rates, classifications, regulations and practices of pipe line companies. *In the Matter of Pipe Lines*, 24 I. C. C. 1. After full investigation we concluded *that it was clearly the intention of Congress to convert all interstate pipe lines into common carriers.* Consequently certain pipe line companies were ordered to file schedules of rates and charges for the interstate transportation of oil, in compliance with the provisions of the act. Some of these companies brought suit in the Commerce Court to set aside and annul our order on the ground, among others, that Congress had exceeded its constitutional powers in declar- [fol. 85] ing persons or corporations using pipe lines in transporting their own oil to be common carriers. The Commerce Court held the statute to be unconstitutional in that it applied to every pipe line that crossed a state boundary and issued a preliminary injunction. *Prairie Oil & Gas Co. v. United States*, 204 Fed. Rep. 798. Upon appeal to the Supreme Court of the United States the decision of the Commerce Court was reversed except as to the Uncle Sam Oil Company. *The Pipe Line Cases*, 234 U. S. 548.

Counsel for the Champlin stated at the argument herein that he would concede that Congress has the power to make any kind of a pipe line, that crosses a state line, a common carrier. Arguments were advanced, however, to support the view that Congress has not yet acted to so classify privately operated products pipe lines such as that owned and operated by the Champlin. One basis for this position is the use of the word "oil" in Section 1 (1) (b) of the act, quoted above, which the Champlin interprets to mean crude oil, and not kerosene or gasoline, because at the time the statute was passed and at the time the decisions (in the *Pipe Line Cases, supra*) were written there was no such thing as a kerosene pipe line, nor was there any such idea as transporting gasoline by a privately owned pipe line. This argument fails to give proper significance to the words "or other commodity," following "oil" in the paragraph quoted.

These words would seem to be all inclusive of commodities that may be transported by pipe line other than water and natural or artificial gas, which are specifically excluded. That such was the intent of Congress is borne out by the fact that although the interstate commerce act has been amended several times in recent years, this language in Section 1 has remained unchanged, though the Congress must be presumed to have been aware of the changes in the petroleum industry which resulted in the transportation of petroleum products by pipe line.

The Champlin contends that it is not subject to the act because it is not a pipe line company; that to be a pipe line [fol. 86] company the operation of the pipe line must constitute the principal portion of its business; and that the operation of its products line is incidental to its other operations and simply a means of marketing its refined products. In other words, the Champlin takes the position that it is operating a privately owned products line carrying its own product from one storage tank to another storage tank. In this connection we refer again to the quotation above from the decision of the Supreme Court in *Valvoline Oil Co.* v. *United States, supra.* The charter of the Champlin *authorizes it to transport petroleum and its products and by performing that transportation by means of a pipe line that crosses state lines, it becomes a pipe line company within the meaning of the act.*

The Champlin stresses the fact that it transports through its pipe line only its own products, and argues therefore that it is operating a private pipe line which comes within the principle of the Uncle Sam Oil Company as stated in *The Pipe Line Cases, supra.* The Supreme Court there said:

> When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery *for its own use, and that is all,* we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end. (Emphasis supplied.)

Here the products are not being transported for the Champlin's own use. The products are transported for sale and the sales are consummated by contract or by "spot" orders and delivery made at either of the terminals out of products already transported to those points and stored there

for that purpose. In *The Pipe Line Cases*, the Supreme Court said:

> That the transportation is commerce among the States we think clear. That conception cannot be made wholly dependent upon technical questions of title, and [fol. 87] the fact that the oils transported belonged to the owner of the pipe line is not conclusive against the transportation being such commerce.

The conclusion that the transportation here considered is interstate commerce is strengthened by the decision of the Supreme Court in *Power Commission* v. *Pipeline Company*, 315 U. S. 575, decided March 16, 1942, where the court said:

> The sale of natural gas originating in one state and its transportation and delivery to distributors in any other state constitutes interstate commerce, which is subject to regulation by Congress.

And in *Valvoline Oil Co.* v. *United States*, *supra*, the court said:

> Whether the oil so owned and transported was ultimately used by the carrier in its own operations or sold to others was in this connection immaterial. Certainly one would find a public interest *in the sole means of transporting this commodity from thousands of wells for thousands of producers.*

Here we have the reverse of the situation in the *Valvoline Oil Co.* case, *supra*, in that the transportation is from one producer to thousands of consumers, *but the principles of interstate commerce and the public interest are in all essentials the same.* The Champlin relies upon certain language of the Supreme Court in *Producers' Transp. Co.* v. *Railroad Comm. of California*, 251 U. S. 228, as applying to the pipe line it operates. We considered the same language in *Valvoline Oil Co. Petition in Valuation of Pipe Lines*, *supra*, where we said:

> The constitutionality of the statute and the validity of the order in that case were upheld. The decision does not differ in principle from *The Pipe Line Cases*. Carriage for the public was the governing factor in both cases.

Here, also, *carriage for the public is the governing factor*, and counsel for the Champlin have advanced no argument [fols. 88-99] to overcome the fact that the pipe line *which it operates is utilized by it for the transportation in interstate commerce of petroleum products, for distribution to the general public in the territory which it serves. Such pipe lines are made common carriers by the Interstate Commerce Act.*

We find that the Champlin Refining Company is engaged in the transportation of refined petroleum products by pipe line in interstate commerce and that it is a common carrier subject to the provisions of the Interstate Commerce Act. It should therefore comply with our valuation orders which have been served upon it and furnish promptly the information called for therein. No further order is required at this time.

By the Commission, Division 2.

W. P. Bartel, Secretary.

[fol. 100] APPENDIX "A" TO EXHIBIT "F" TO PETITION

INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Valuation of Pipe Line of Champlin Refining Company

Submitted June 1, 1943. Decided June 12, 1944.

Upon further consideration finding in original report, 49 Val. Rep. 463, that the Champlin Refining Company is engaged in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act, affirmed.

Additional appearance: J. V. Norman for petitioner.

REPORT OF THE COMMISSION ON REARGUMENT

BY THE COMMISSION:

In the original report in this proceeding, 49 Val. Rep. 463, Division 2 found that the Champlin Refining Com-

pany, hereinafter generally referred to as the Champlin, is engaged in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act. No order was entered but the Champlin was directed to comply with orders under Section 19a of the act, previously served upon it, and to furnish promptly the information called for therein. Such information is required for our use in valuing the properties of common carriers by pipe line. The Champlin thereupon filed a petition for rehearing, reargument and reconsideration. The petition was granted, except as to rehearing, and reargument was heard.

There is no dispute as to the statements of fact in the original report, but they will be repeated here in sufficient detail to furnish a clear understanding of the jurisdictional [fol. 101] question which was the basis of the reargument. It is the position of the Champlin that, granting the facts to be as stated, it is not a pipe line company as that term is defined in the Interstate Commerce Act; it is not engaged, in the operation of its pipe line, in interstate commerce as that term is defined in the Interstate Commerce Act; and it is not a common carrier.

The Champlin is a corporation of the State of New Mexico authorized by its charter to produce, buy, sell and transport petroleum, to refine petroleum, and to buy, sell and deal in the refined products of petroleum. The pipe line which the Champlin owns and operates is a 516-mile gasoline pipe line system consisting of welded 6-inch pipe extending from Enid, Okla., to Rock Rapids, Iowa. In connection with the pipe line the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kan., Superior, Neb., and Rock Rapids. The construction of the portion of the pipe line from Enid through Hutchinson to Superior, 256 miles, and the terminal facilities at Hutchinson and Superior, was completed in June, 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at Rock Rapids were completed in May, 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of

the pipe line and appurtenant facilities as of December 31, 1940 was $3,189,028.66.

The Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, oil trucks and other equipment, all more specifically described and enumerated in the original report. It also owns all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of crude [fol. 102] oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid.

In disposing of the petroleum products produced by it at its refinery at Enid, the Champlin uses two types of sales; one is known as the spot-market or date of shipment sale, the other, or contract sale, is based on yearly contracts with its customers. The spot, or f. o. b., price of the product at Enid is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices as shown in the issue of the Thursday preceding date of shipment. These prices are made effective at 7:00 a. m. Friday morning and remain in force until the next succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The delivered price includes, in addition to the spot or f. o. b. charge at the Enid refinery, a charge called a differential which is adjusted so that the through charge to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe line terminal.

The contract sales are described in the original report by the following typical example:

> On January 18, 1941, the Champlin entered into a contract with the Farmers Union Co-op. Supply Company of Beatrice, Nebr., calling for the delivery by the Champlin of a maximum of 765,000 gallons of petroleum products named in the contract, at prices therein agreed upon, during the period of one year beginning February 4, 1941. A shipment of a tank-car load of gasoline from the Superior terminal of the Champlin is

indicative of the carrying out of this contract. This [fol. 103] car contained 8,110 gallons of gasoline weighing 53,526 pounds and moved from Superior, October 11, 1941, destined to Beatrice, routed C. B. & Q. to Fairbury, Nebr., and C. R. I. & P. to destination, at a rate of 10.5 cents per 100 pounds, indicating a charge of $56.21 for the rail portion of the transportation, to be paid by the consignee direct to the railroads. The invoice of the Champlin to the consignee contains the following charges: $496.74, the cost at Enid of 8,110 gallons of the particular type of gasoline at the base price of $.06125 per gallon; $121.65 federal tax at the rate of 1.5 cents per gallon; and $81.10, the so-called differential, which in this instance equaled one cent per gallon. The total charge made by the Champlin for this carload of gasoline was $699.49. The item of $81.10 was described by a witness for the Champlin as representing the difference between the through railroad freight rate from Enid to Beatrice and the rail charge from Superior to Beatrice and was the total charge made by the Champlin for transporting this gasoline from Enid, including handling and all other items that go into the movement from the refinery to the pipe line terminal at Superior.

The facts were summarized in the original report in the following language:

Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank car racks and is not delivered directly from the pipe line in any [fol. 104] instance; no tariffs have been filed with this Commission or with any state commission or regulatory body; the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line.

Considering first the status of the Champlin as a pipe line company. It is clearly shown by the record that the Champlin is a fully integrated oil company owning and operating, either directly or through its subsidiary the Cimarron Valley Pipe Line Company, every facility necessary for the production and the transportation of crude oil by pipe line, the refining of such crude oil, the transportation by pipe line of the products of its refinery, and the distribution of the products through jobbers, or directly, to the consuming public.

The Champlin bases its contention that it is not a pipe line company on the theory that such a company is one whose principal business is the operation of a pipe line. The analogy is drawn that an express company or a sleeping car company is recognized as being principally engaged in the operation of either express cars or sleeping cars. Also that as the Champlin operates a great many trucks it could as well be called a truck company. The limitation which the Champlin would place upon the phrase "pipe line company" is dispelled by general usage of the word "company" and by the evident purport of the language of the Interstate Commerce Act as interpreted by the Supreme Court. In *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, in considering the applicability of the act to the pipe line department of the Valvoline Oil Co., which uses its pipe line to transport crude oil to its refinery, the Supreme Court said, "There is no controversy over whether appellant is an interstate pipe line company. Obviously it is."

Webster's New International Dictionary defines "company" as "an association of persons for a joint purpose [fol. 105] or performance, especially for carrying on a commercial or industrial enterprise or business." In a fully integrated oil business, such as that which the Champlin operates, the association of persons which constitutes the organization is engaged in a variety of enterprises, and the word "company" as applied to it has many meanings. It is unquestionably an oil company as it deals in nothing but petroleum oil and the products thereof. Its corporate title stamps it as a refining company. Its charter authorizes the Champlin to transport petroleum oil and petroleum products and it has elected to perform the major part of such transportation of petroleum products by the pipe line which is the subject of this proceeding. As

this pipe line crosses several state lines and carries petroleum products moving in interstate commerce, as more fully discussed hereinafter, the Champlin is a pipe line company within the meaning of the interstate commerce act.

The Champlin would have us hold that in the operation of its pipe line it is not engaged in interstate commerce, because the products transported through the pipe line are owned by the Champlin and this operation comes within the principle of the Uncle Sam Oil Co., as stated in *The Pipe Line Cases*, 234 U. S. 548. The Supreme Court there said:

> That the transportation is commerce among the states we think clear. That conception cannot be made wholly dependent upon technical questions of title, and the fact that the oils transported belonged to the owner of the pipe line is not conclusive against the transportation being such commerce.

And in *Power Commission* v. *Pipeline Company*, 315 U. S. 575, the Supreme Court said:

> The sale of natural gas originating in one state and its transportation and delivery to distributors in any other state constitutes interstate commerce which [fol. 106] is subject to regulation by Congress.

In distinguishing the status of the Uncle Sam Oil Company, the Supreme Court, in *The Pipe Line Cases, supra*, used this language:

> When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery *for its own use, and that is all*, we do not regard it as falling within the description of the act, *the transportation being merely an incident to use at the end.* (Emphasis supplied.)

The Champlin does not in any way come within the principle there announced. There is no contention that the Champlin transports the products of its refinery for its own use. The products are made for sale to the general public in many states. In the case of contract sales, of which the example hereinbefore given is typical, the inter-

state destination is known when the product leaves the refinery at Enid and the transportation through the pipe line is an incident to service for the general public. In the case of "spot" sales the same service has been performed before the actual sale is made at the pipe line terminals.

The Champlin takes the position that the question of whether or not the transportation here involved is transportation within the meaning of the Act is conclusively determined by the decision of the Supreme Court in *Pennsylvania R. R. Co.* v. *Public Utilities Commission of Ohio*, 298 U. S. 170, called herein the *Negley* case. The facts upon which that decision was based were, briefly, these: The Pittsburgh Coal Company transported coal from its mines in Pennsylvania in its own barges, towed by its own tug boats, over the Monongahela and Ohio rivers to Smith's Ferry, Pa. There the coal was transferred to rail cars owned by the coal company and taken over its own railroad [fol. 107] to Negley, Ohio, where it was washed, freed from foreign matter and broken up or assorted into desired sizes. As the Supreme Court said, "Then for the first time it is ready for shipment to fill specific orders, * * *." The coal which was considered in that proceeding was shipped by common-carrier railroads from Negley to Youngstown, Ohio.

The issue in the *Negley* case was stated by the Supreme Court as follows:

> The question for us here is not whether the movement of the coal is to be classified as commerce or even as commerce between states. The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a federal commission. The Interstate Commerce Act (U. S. C. A., title 49, No. 1, *et seq.*) is aimed at common carriers exclusively (No. 1 (1), (3)), and not even at all these.

The court further said that in determining the application of the Interstate Commerce Act to interstate commerce "Transportation begins for that purpose, if not for others, when the merchandise has been placed in the possession of a carrier." The Act defines the word "carrier" as used therein to mean "common carrier."

The court held in the *Negley* case as follows:

> The only transportation of this coal by a common carrier of merchandise either by railroad or by water was intrastate transportation in Ohio between Negley and Youngstown. The transportation between Pennsylvania and Ohio was by the owner, who was not a common carrier, but furnished implements of carriage for its own use exclusively.

In the present proceeding the preliminary transportation comparable to that in the *Negley* case up to Negley, is that [fol. 108] performed by the Cimarron Valley Pipe Line Company in bringing the crude petroleum to the refinery at Enid. Then, after the crude oil is refined, for the first time the products are ready for shipment to fill specific orders. Then these products are placed in the possession of a carrier by pipe line, not for delivery in the same state as in the *Negley* case but for carriage over several state lines for delivery in numerous states. In *The Pipe Line Cases, supra,* and in *Valvoline Oil Co.* v. *United States, supra,* similar transportation of crude oil by pipe line was held to be interstate commerce. Also it is a form of interstate commerce which Congress has subjected to regulation by this commission, as more fully discussed hereinafter.

Viewing the facts presented in this record, in the light of the expressions of the Supreme Court, it is clear that the transportation of petroleum products by the Champlin by means of the pipe line here considered is interstate commerce.

With regard to its common carrier status the Champlin takes the position that the interstate commerce act, as interpreted by the decisions of the Supreme Court, makes common carriers only of those pipe lines that are in substance common carriers. Accepting as sound the statement in the original report that "carriage for the public is the governing factor," the Champlin contends that the carriage here under consideration is not such carriage.

By the Hepburn Act of June 29, 1906, the provisions of section 1 of the Act to Regulate Commerce were made applicable to "any corporation or any person or persons engaged in the transportation of oil or other commodity except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or

partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act." Except for minor revisions in [fol. 109] the language, the provisions affecting pipe line companies remain unchanged by subsequent amendments. Section 1 of the act, as now in effect, reads in part as follows:

> (1) That the provisions of this part [Part 1] shall apply to common carriers engaged in—
>
> (b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * * from one state * * * to any other state * * *.
>
> (3) (a) The term "common carrier" as used in this part shall include all pipe line companies; * * *.

Giving consideration to the Hepburn amendment of the Act in *The Pipe Line Cases, supra*, the Supreme Court said with relation to the pipe line carriers there considered,

> As applied to them, while the amendment does not compel them to continue in operation, it does require them not to continue except as common carriers.

And in the same decision the court said:

> So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid.

More than twenty years had passed after that decision was rendered before the pipe line of the Champlin was constructed. These conclusions of the Supreme Court were set out in the decision cited after the court had in the same decision construed the language of the statute as amended by the Hepburn Act to constitute "an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as" common carriers. And as stated before herein, the Supreme Court has held that a subsequent change in language has not changed the meaning of the act.

[fol. 110]. There is little ground for the argument that the carriage by pipe line here considered is not carriage for the public. In *Valvoline Oil Co.* v. *United States, supra,* comparing the Uncle Sam Oil Company with Valvoline, the Supreme Court said, "Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline." In other words, carriage for the public distinguished the Valvoline from the Uncle Sam Oil Company which carried only for itself. In the case of the Champlin the act of carriage precedes the distribution to the public of the product carried. The record is clear that the Champlin is willing to sell its products to any part of the consuming public that can avail itself of the Champlin's facilities, provided the purchaser will agree to pay to the Champlin, under contract or spot sales, the so-called differential as compensation to the Champlin for transporting the product from Enid through the pipe line to the respective terminals. As previously described, the differential is the difference between the through railroad freight rate from Enid to final destination and the rail charge from the pipe line terminal to such destination. The differential is added to the cost of the product in the sale of all products transported through the pipe line. The carriage performed by the Champlin by means of the pipe line here considered is in all of its aspects carriage for the public.

We find that the Champlin is a common carrier of refined petroleum products by pipe line and that it is subject to the provisions of the Interstate Commerce Act. The findings of Division 2 in the original report are accordingly affirmed.

An order will be entered directing the Champlin to comply with the provisions of our Valuation Orders Nos. 26 and 27 previously served upon it in connection with proceedings under section 19a of the Act, within 90 days from the date [fol. 111] of service hereof. The date of valuation is hereby fixed as of December 31, 1943.

Chairman Patterson and Commissioner Porter dissent.

APPENDIX "B" TO EXHIBIT "F" TO PETITION

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 12th day of June, A. D. 1944

Valuation Docket No. 1267

Valuation of Pipe Line of Champlin Refining Company

It appearing, That the Champlin Refining Company was duly served with copies of Valuation Orders Nos. 26 and 27, issued by this Commission, requiring the filing within a time specified of certain maps and information required for the valuation of its pipe-line property under section 19a of the Interstate Commerce Act;

It further appearing, That the Commission has made and filed a report finding that the Champlin Refining Company is a common carrier of refined petroleum products by pipe line and subject to the provisions of the Interstate Commerce Act, which said report is hereby referred to and made a part hereof:

It is ordered, That the said Champlin Refining Company comply with the provisions of said Valuation Orders Nos. 26 and 27 within 90 days from the date of service hereof and as of December 31, 1943.

By the Commission: W. P. Bartel, Secretary. (Seal.)

[fol. 112] EXHIBIT "G" TO PETITION

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 26th day of July, A. D. 1944

Valuation Docket No. 1267

Champlin Refining Company

Upon further consideration of the record in the above-entitled proceeding, and of petition of the Champlin Refin-

ing Company for rehearing and vacation of report and order of the Commission on reargument therein;

It is ordered, That the petition be, and it is hereby, denied.

By the Commission: W. P. Bartel, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 113] IN UNITED STATES DISTRICT COURT

ORDER FOR ASSOCIATE JUDGES—Filed August 10, 1944

On this the 10th day of August, 1944, Plaintiff, Champlin Refining Company, presented in Chambers its Petition in the above-entitled and numbered civil action, asking that the same be set for hearing on the application for interlocutory injunction therein made, and the Court, having examined the Petition, and it appearing sufficient under Sections 46 and 47 and related sections in Title 28, United States Code Annotated, said Petition and application for interlocutory injunction is set for hearing on the 8th day of September, 1944, at the United States Court House in Oklahoma City, Oklahoma, and for the purpose of hearing said application for interlocutory injunction, I, Stephen S. Chandler, Jr., Judge of the District Court of the United States for the Western District of Oklahoma, do hereby call to my assistance the Honorable A. P. Murrah, Judge of the Circuit Court of Appeals for the Tenth Circuit, and the Honorable Edgar S. Vaught, Judge of the District Court of the United States for the Western District of Oklahoma.

Made and entered at Oklahoma City, Oklahoma, this the 10th day of August, 1944.

Stephen S. Chandler, Jr., Judge.

[File endorsement omitted.]

[fol. 114] IN UNITED STATES DISTRICT COURT

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed October 2, 1944

To the Honorable Judges of the Aforesaid Court:

In accordance with the provisions of Section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. C., Supp. VI, Title

28, Sec. 45a), we hereby enter the appearance of the Interstate Commerce Commission as a party defendant and of ourselves as its counsel in the above-entitled suit, and pray that the attached answer be filed and that said Commission be made a party defendant therein.

Daniel W. Knowlton, Chief Counsel; Nelson Thomas, Attorney, Interstate Commerce Commission.

[File endorsement omitted.]

[fol. 115] IN UNITED STATES DISTRICT COURT

ANSWER OF INTERVENING DEFENDANT INTERSTATE COMMERCE COMMISSION—Filed October 2, 1944.

Comes now the Interstate Commerce Commission, hereinafter called the Commission, intervening defendant herein, and for its answer to the petition filed herein in the above-entitled suit respectfully shows:

I

That for the purpose of this suit and none other, the Commission admits that the allegations of paragraphs I, II and III of the petition filed herein are true, except that the Commission has no information sufficient to form a belief as to the truth of the allegations of paragraph II relative to the percentage of plaintiff's sales in certain states of the total amount of such products sold by all producers in said states, or of plaintiff's purpose in building its pipe line, or the allegations of paragraph III relative to the use by plaintiff of welded, seamless steel pipe, [fol. 116] or as to sales of products at plaintiff's Enid Refinery to be delivered through said pipe line; and except that the Commission denies each and all the allegations in subparagraphs (a), (b) and (c) of said paragraph III, and alleges that even if all the allegations in said subparagraphs were true, it would still be the duty of the Commission to find and state the value of said pipe line.

II

Answering the allegations of paragraphs IV and V of the petition, the Commission admits that the allegations of

said paragraphs are true, except that the Commission alleges that the data which plaintiff submitted to the Commission on July 17, 1941, did not comply with the Commission's rules and regulations established by it, pursuant to law, governing the form and substance of data required for the valuation of pipe lines, and the Commission alleges and shows that it declined to accept said data in lieu of returns to and compliance with valuation orders Nos. 26 and 27, because said data neither in form nor substance complied with said valuation orders.

III

Answering paragraph VI of the petition, the Commission admits that hearings were had in Valuation Docket No. 1267, *Valuation of Pipe Line of Champlin Refining Company*, testimony was taken and briefs filed and the cause orally argued as alleged in the first subparagraph of said paragraph VI. The Commission further admits that on or about December 14, 1942, Division II of the Commission made its report, but the Commission denies that the quotation from said report appearing at the bottom of page 5 of the petition is a full, true, or correct statement of the [fol. 117] findings of said report and respectfully refers the Court to the full text of said report beginning on the 63rd page of the pamphlet entitled "Exhibits to Petition" and filed by the plaintiff with its petition herein.

IV

Answering paragraph VII of the petition, the Commission admits the allegations therein contained, except that it denies that the Commission's action in denying plaintiff's petition for rehearing in said paragraph VII referred to was arbitrary, capricious or in any respect contrary to law.

V

Answering paragraphs VIII and IX of the petition, the Commission denies the truth of the allegations in said paragraphs contained.

VI

Answering paragraph X of the petition, the Commission admits and alleges that it has undertaken to make a valuation of the pipe-line companies of the plaintiff pursuant

to the provisions of the Interstate Commerce Act, including those provisions referred to and in part quoted in said paragraph X, but the Commission denies that said provisions or its construction and application thereof are erroneous or in any wise unconstitutional or violative of any legal or constitutional right of the plaintiff.

VII

Answering paragraph XI of the petition, the Commission denies each of and all the allegations therein contained.

VIII

Answering paragraph XII of the petition, the Commis-
[fol. 118] sion alleges and shows that it has no knowledge upon which it may form a belief as to the truth of the plaintiff's allegations relative to the plaintiff's experience in the sale of its petroleum products, and the Commission further alleges and shows that the matters and things in said paragraph XII contained are argumentative and irrelevant to the issues involved in this suit.

IX

Answering paragraph XIII of the petition, the Commission alleges and shows that it has no knowledge sufficient to form a belief as to the plaintiff's need for the entire capacity of said pipe line or as to its competitive requirements, and the Commission alleges and shows that its order attacked in this suit does not require the plaintiff to surrender the use of said pipe line to the public or do anything other than to cooperate with the Commission in the valuation of said pipe line; and the Commission alleges and shows that the allegations of said paragraph XIII are argumentative and irrelevant to any issue in this suit.

X

Answering the allegations of paragraph XIV of the petition, the Commission denies that compliance by the plaintiff with the order made by the Commission in the proceeding before it would have any detrimental effect upon either the plaintiff or the public at large, and the Commission alleges and shows that the question of detriment to the public at large as distinguished from detriment to the plaintiff is irrelevant to any issue involved in this suit.

XI

Answering paragraph XV of the petition, the Commission admits that under and by virtue of applicable statutes of [fol. 119] the United States the plaintiff must comply with the order of the Commission made June 12, 1944, and set out in full on the 97th page of the pamphlet entitled "Exhibits to Petition" filed herein by plaintiff, when said order has become effective, or be subject to penalties prescribed in said statutes, but the Commission denies that compliance by the plaintiff with the Commission's said order of June 12, 1944, will cause any substantial damage or any legal damage whatever to the plaintiff.

Except as herein expressly admitted, the Commission denies each of and all the allegations contained in the petition, especially insofar as they are in conflict with any allegation of this answer or with any statement, finding, determination or conclusion stated in the Commission's reports of December 14, 1942, and June 12, 1944.

All of which matters and things the Commission is ready to maintain, aver and prove.

Wherefore, this defendant prays that this petition be dismissed.

Interstate Commerce Commission, by (S.) Nelson Thomas, Attorney, 3329 Interstate Commerce Comm. Bldg., Washington, D. C.

(S.) Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 120] *Duly sworn to by Clyde B. Aitchison. Jurat omitted in printing.*

[fol. 121] Certificate of Service

I certify that a copy of the foregoing answer on behalf of defendant Interstate Commerce Commission was this day mailed by me to each of the following:

Harry O. Glasser, Esq., Attorney at Law, Enid, Oklahoma.
Dan Moody, Esq., Attorney at Law, Austin, Texas.
Edward Dumbauld, Esq., Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

This September 28, 1944.

Nelson Thomas, Attorney, Interstate Commerce Commission.

[File endorsement omitted.]

[fol. 122] IN UNITED STATES DISTRICT COURT

ANSWER OF THE UNITED STATES OF AMERICA—Filed October 7, 1944

Now comes the United States of America, defendant in the above-entitled cause, and for its answer to the petition or complaint herein, answers and says:

1. For the purposes of this suit and none other, this defendant admits the allegations contained in paragraphs I, II, and III of the complaint, except that this defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph II relative to the percentage of plaintiff's sales in certain states of the total amount of sales in said states, or of plaintiff's purpose in building its pipe line, or the allegations of paragraph III, relative to the use by plaintiff of welded, seamless, steel pipe, or as to sales of products at plaintiff's Enid refinery to be delivered through said pipe line; and except that this defendant denies each and all of the allegations in subparagraphs (a), (b), and (c) of said paragraph III, and alleges that even if all the allegations in said paragraph III were true, it would still be the duty of the Commission to find and state the value of said pipe line.

[fol. 123] 2. This defendant admits the allegations contained in the first sentence of paragraph IV of the complaint, and admits the authenticity of Valuation Order No. 26, effective December 31, 1934, a copy of which is appended as Exhibit "B" to the complaint. With respect to the remaining allegations of said paragraph IV this defendant is without knowledge or information sufficient to form a belief as to the truth of said allegations, but adopts the allegations with respect thereto contained in paragraph II of the answer of the intervening defendant Interstate Commerce Commission regarding the deficiency in form and substance of the data said to have been submitted by plaintiff to the Commission on July 17, 1941; and this defendant moves to strike the said remaining allegations of said paragraph IV, and objects to the consideration by this Court of the correspondence included in Exhibit "A" to the complaint, as well as to Exhibit "C" to the complaint, all of which preliminary discussions between the parties, besides being objectionable on other grounds, are irrelevant and

immaterial to the order of the Commission attacked in the present suit and are not involved or drawn into issue in the present suit, and violate the requirements of Rule 8 of the Federal Rules of Civil Procedure.

3. Answering the allegations of paragraphs V, VI, and VII of the complaint, this defendant admits the institution of proceedings before the Interstate Commerce Commission in Valuation Docket No. 1267, *Valuation of Pipe Line of Champlin Refining Company;* that in due course in connection with said proceedings hearings were held, testimony taken, briefs filed, and the cause orally argued, and a report issued by Division 2 of the Commission on or about December 14, 1942, the full and correct text of which appears as Appendix "A", being pages numbered 18 through 29 inclusive of Exhibit "E", appended to the complaint, beginning on the 64th page of the pamphlet entitled "Exhibits to Petition" and filed by plaintiff with its petition herein.

[fol. 124] 4. This defendant admits that in due course the full Commission, on June 12, 1944, issued the report and order included as Appendix "A" and Appendix "B" to Exhibit "F" to the complaint, being the pages numbered 12 through 23, inclusive, of said Exhibit "F", and beginning at the 88th page of the pamphlet entitled "Exhibits to Petition" and filed by the plaintiff with its complaint herein. The defendant objects to consideration by this Court of Exhibit "E" to the complaint (except Appendix "A" thereto) except as evidence of the fact, which is admitted, that such a petition was filed with and acted on by the Interstate Commerce Commission. This defendant objects to consideration by this Court of Exhibit "F" to the complaint (except Appendices "A" and "B" thereof) except as evidence of the fact, which is admitted, that said petition was filed with and acted on by the Interstate Commerce Commission, as shown by Exhibit "G" to the complaint. This defendant objects to consideration by this Court of Exhibit "D" to the complaint, except as evidence of the fact, which is admitted, that a petition was filed with and acted on by the Interstate Commerce Commission.

5. This defendant denies the allegations contained in paragraphs VIII, IX, X, and XI of the complaint, and disagrees with the conclusions of law set forth therein; except that this defendant admits and alleges that the Interstate

Commerce Commission has undertaken to make a valuation of the pipe line properties of the plaintiff, pursuant to the provisions of the Interstate Commerce Act, as amended, including Section 19a thereof, but that defendant denies that any of the said provisions, or the Commission's construction and application thereof, are in any wise erroneous or unconstitutional or violative of any legal right of the plaintiff.

6. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 12, 13 and 14 of the complaint; and this defendant alleges that the matters and things in said paragraphs are argumentative and self-serving and irrelevant to the issues involved in this suit. This defend- [fol. 125] ant further alleges that the order of the Interstate Commerce Commission under attack in this suit does not require plaintiff to surrender to the public the use of the pipe line referred to in the said paragraph 1w, or to do anything other than to comply with the provisions of Valuation Orders Nos. 26 and 27, that is to say, to cooperate with the Commission in the valuation of said pipe line. This defendant further alleges that nothing in the said order of the Interstate Commerce Commission under attack in the present suit requires any change in the use to which plaintiff is putting its pipe line property. This defendant further alleges that plaintiff has no standing to represent the public at large, but denies that compliance by plaintiff with the Commission's order would have any detrimental effect upon either the public at large or the plaintiff.

7. In answer to paragraph XV of the complaint, this defendant admits that under and by virtue of applicable statutes of the United States the plaintiff must comply with the Commission's order of June 12, 1944, in Valuation Docket No. 1267 (which is set forth as Appendix "B" to Exhibit "F" to the complaint, and appears on the next to the last page of the pamphlet entitled "Exhibits to Petition" filed by plaintiff with its complaint), when said order has become effective, or be subject to penalties prescribed in said statutes, but the Commission denies that compliance by plaintiff with the said order of the Commission will cause any substantial damage or any legal damage whatsoever to plaintiff. This defendant specifically denies that the

said order requires or compels plaintiff to file and publish tariffs; this defendant alleges that said order was made pursuant to the valuation provisions of Section 19a of the Interstate Commerce Act, as amended, and does not involve or invoke certain other regulatory provisions of said Act.

8. Except as herein expressly admitted, this defendant denies each and all of the allegations contained in the complaint, and specifically denies any such allegation in so far [fol. 126] as it conflicts with any allegation contained in this answer, or in the answer of the defendant Interstate Commerce Commission, or in the Commission's reports of December 14, 1942, and June 12, 1944.

Wherefore, this defendant prays that the relief prayed for by plaintiff be denied and that the complaint be dismissed at plaintiff's costs.

Edward Dumbauld, W. B. Watson Snyder, Special Assistants to the Attorney General, Department of Justice, Washington, D. C.

Wendell Berge, Assistant Attorney General. Charles E. Dierker, United States Attorney.

[fol. 127] I certify that a copy of the foregoing answer was this day mailed to the following persons:

Harry O. Glasser, Esq., Enid, Oklahoma.
Dan Moody, Esq., Austin, Texas.
Nelson Thomas, Esq., Interstate Commerce Commission, Washington, D. C.

This 2nd day of October, 1944.

Edward Dumbauld, Special Assistant to the Attorney General.

[File endorsement omitted.]

[fol. 128] In United States District Court

Amendment to the Petition—Filed October 12, 1944

Now comes Champlin Refining Company, Petitioner, with leave of the Court thereto first had and obtained, and files

this Amendment to the Petition, and thereto amends the Petition in the following particulars:

I

Insert in Paragraph IX, just after the sub-paragraph identified as (7), the following:

(8) The differential represents a charge assessed by Petitioner for transporting products through its pipe line from the refinery to the pipe line terminals.

(9) Petitioner makes a charge for moving its products from its refinery to the pipe line terminals.

(10) By transporting petroleum products by means of pipe line that crosses state lines, Petitioner becomes a pipe line company within the meaning of the Act.

(11) The differential represents the charge assessed by Petitioner for transporting petroleum products through its pipe line. A witness for Petitioner stated that the difference between the through railroad freight rate from Enid to Beatrice and the rail charge from Superior to Beatrice was the total charge made by Petitioner for transporting gasoline from Enid, including handling and all other items that go into the movement from the refinery to the pipe line terminal at Superior.

(12) As the pipe line crosses several state lines and carries petroleum products in interstate commerce, Petitioner is a pipe line company within the meaning of the Interstate Commerce Act.

(13) There is no dispute as to the statement of facts in the original report.

[fol. 129] (14) There is no contention that Petitioner transports the products of its refinery for its own use.

(15) In the case of contract sales, the interstate destination is known when the product leaves the refinery at Enid and the transportation through the pipe line is an incident to service for the public.

(16) Petitioner is willing to sell its products to any part of the consuming public that is willing to pay the "so-called differential" as compensation to Petitioner for transport-

ing the product from Enid through the pipe line to the respective terminals.

(17) The differential is added to the cost of the product in the sale of all products transported through the pipe line.

(18) The carriage performed by the Petitioner by means of the pipe line is in all of its respects carriage for the public.

(19) Petitioner is a common carrier of refined petroleum products by pipe line and is subject to the provisions of the Interstate Commerce Act.

II

Insert in Paragraph XI, just after the sub-paragraph identified as (1), the following:

Any finding made by the Commission in either the report of December 14, 1942, or in the report of June 12, 1944, contrary to the facts alleged in the foregoing several sub-paragraphs of this Petition, were made without any evidence to support them, are arbitrary, capricious and in excess of the powers and jurisdiction of the Interstate Commerce Commission.

As a part of this Amendment, Petitioner adopts all of the allegations and the prayer of its Petition.

Harry O. Glasser, Enid, Oklahoma; Dan Moody, Austin, Texas, Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 129-a] In United States District Court

Before: Honorable Alfred P. Murrah, United States Circuit Judge, Honorable Edgar S. Vaught, United States District Judge; Honorable Stephen S. Chandler, Jr., United States District Judge

Order Suspending Enforcement of Order of I. C. C.

On this 12th day of October, 1944, the plaintiff appears by Messrs. Harry O. Glasser, Dan Moody and Nathan

Scarritt, its attorneys, and the defendant appears by Edward Dumbauld, Esq., Assistant to the Attorney General, and John Brett, Esq., Assistant United States Attorney, and the intervener, Interstate Commerce Commission, appears by Nelson Thomas, Esq., its attorney. Thereupon this cause comes on for hearing on application of plaintiff for an interlocutory injunction. The plaintiff asks and is granted leave to file amendment to its petition instanter without prejudice to this hearing and the defendant and the intervener are granted ten (10) days from this date to file answer thereto. Counsel for plaintiff makes statement of its case to the Court and withdraws Subdivision 14 of its petition from consideration of the Court. Counsel for defendant and intervener make their statement to the Court. Thereupon the plaintiff offers evidence in support of its application for a preliminary injunction, and J. J. Dunlavey is sworn and testifies in plaintiff's behalf, and plaintiff rests. The defendant and intervener announce that they have no evidence to offer and parties present oral arguments to the Court. It appearing to the Court that the expiration date of the order of the Interstate Commerce Commission is November 17, 1944, the Court enters an order enjoining the enforcement of said order pending the final disposition of this case. Thereupon the application for interlocutory injunction is submitted to the Court for determination, the plaintiff is granted thirty (30) days from this date to file its brief, and the defendant, and Interstate Commerce Commission are granted thirty (30) days thereafter to file their answer briefs.

* * * * * * * *

[fol. 130] IN UNITED STATES DISTRICT COURT

Before Murrah, Circuit Judge, and Vaught and Chandler, District Judges

OPINION—Filed March 21, 1945

CHANDLER, District Judge, delivered the opinion of the Court:

This is a suit to enjoin, set aside and annul an order of the Interstate Commerce Commission, dated June 12, 1944, requiring plaintiff to comply with the provisions of the

Commission's valuation procedure, as authorized by 49 U. S. C. A. s19A.

This Court's jurisdiction is based upon statutory provisions authorizing suit to be brought against the United States and requiring trial before a court of three judges, 28 U. S. C. A. 41 (28); 28 U. S. C. A. 45, 46, 47 and 48. These provisions refer to suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission.

[fol. 131] Plaintiff, Champlin Refining Company, is a corporation organized under the laws of New Mexico with charter powers to produce, buy, sell and transport petroleum, to refine petroleum and to buy, sell and deal in the refined products of petroleum. It operates a refinery at Enid, Oklahoma, being authorized by the State of Oklahoma to do business within its borders.

The crude oil supplied to the refinery is obtained from numerous producing wells throughout the State of Oklahoma, some owned by plaintiff and some owned by other parties. It is collected and brought to the Enid Refinery by pipe lines of plaintiff's wholly owned subsidiary, Cimarron Valley Pipe Line Company.

The pipe line under consideration extends from plaintiff's refinery at Enid, Oklahoma, across Kansas, Nebraska, and a part of South Dakota, to Rock Rapids, Iowa. The construction of the line was begun by the Cimarron Valley Pipe Line Company in 1935 and completed as far as Superior, Nebraska, in the latter part of that year. The Cimarron Valley Pipe Line Company sold and conveyed its pipe line to Superior, Nebraska, to the Champlin Refining Company on June 10, 1935, before it was ever used. An extension of the pipe line from Superior, Nebraska, to Rock Rapids, Iowa, was completed about May 1, 1940. The total cost of construction as of December, 1940, was $3,198,028.66.

The line is 516 miles long, constructed of six inch welded pipe, is seamless and has no connection with any other pipe line. It is so constructed and equipped that products can be discharged from it only at Hutchinson, Superior and Rock Rapids. Plaintiff operates storage tanks and railroad and truck delivery facilities at these terminals. All products transported are owned by plaintiff and refined at its refinery at Enid, Oklahoma.

Plaintiff sells the products transported over the pipe line in "spot-market" and "contract" sales in both of which types of transactions the purchaser pays an amount equal to the refinery price at Enid, Oklahoma, plus an [fol. 132] amount designated as a "differential." This differential is an amount equal to the through railroad rate from Enid, Oklahoma, to destination, less the charges paid out by the purchaser for the short-haul transportation from the pipe line terminal to destination. The charges, however, are modified in some sales to meet the competitive prices made by other refineries.

The line is not used as a "gathering line" to bring crude oil to the refinery from the producing wells. The Cimarron Valley Pipe Line Company is employed for that purpose. It is what is known as a "products pipe line" used for the transportation of refined petroleum products. In the construction of the line, the right of way was secured by purchase and not by condemnation proceedings. Some condemnation proceedings were instituted by the Cimarron Valley Pipe Line Company prior to the purchase of the line by the plaintiff, but subsequently were dismissed and the property purchased.

Plaintiff publishes no tariffs with the Interstate Commerce Commission, or any other regulatory body, and accepts no oil products for transportation for other parties, or the general public. It does not permit any person, firm, or corporation, other than itself, to used its pipe line, its facilities, or anything pertaining to them, as a means of transportation of petroleum or any other commodity.

The only question involved is whether plaintiff is a "pipe line company" within the terms of the Interstate Commerce Act.

In 1906 the Interstate Commerce Act was amended to read as follows:

> "Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe line, * * * who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier

or carriers engaged in the transportation of passengers or property wholly by railroad * * * from one State or Territory of the United States, * * * to any other State * * *." 34 Stat. 584.

In 1920 the Act was further amended to read as follows:

"(1) That the provisions of this Act shall apply to common carriers engaged in——

* * * * * * *

[fol. 133] "(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, * * *.

"(c) * * * from one State * * * to any other State * * *.

* * * * * * *

"(3) The term 'common carrier' as used in this Act shall include all pipe line companies; * * * and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire * * *." 41 Stat. 474. * * *

"19a. That the commission shall as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act." 37 Stat. 701. (49 U. S. C. A. s1, 19A.)

The construction of the Act was before the Court in Pipe Line Cases, 234 U. S. 548; 58 L. Ed. 1459, and Valvoline Oil Company v. United States, 308 U. S. 141; 84 L Ed. 151.

In Pipe Line Cases the Court was considering interstate pipe lines already engaged in transportation at the time of the passage of the 1906 amendment. The matter under consideration was the constitutionality of the act as applied to such companies. It held that certain of the companies were common carriers in substance if not in form and fell within the coverage of the Act even though engaged in the business at the time of the amendment.

With reference to the Standard Oil Company of Louisiana which was incorporated after the passage of the amendment, the Court held the act applicable for this same reason or because it entered the business of interstate transportation of oil by pipe line after the passage of the 1906 amendment.

As to the Uncle Sam Oil Company, the Court held that, being engaged only in transporting its own oil for its own use, the transportation involving neither purchase nor sale, such transportation was not transportation in commerce. The Court also undoubtedly took into consideration the fact that the company, having entered the field as a purely private pipe line prior to the passage of the 1906 amendment and having vested rights, arbitrary classification of such line as a common carrier would be unconstitutional.

[fol. 134] The Uncle Sam Oil Company case must be distinguished from the instant case upon the ground that plaintiff is transporting oil products *to market for sale to the public* and thus is engaged in transportation in commerce within the meaning of the Act. The time of transfer of title, whether at Enid, Oklahoma, or at Hutchinson, Superior, Rock Rapids or at purchaser's place of business, is technical. In either instance the public pays the transportation charge. A charge or "differential" equal to rail rates is added in "spot-market" sales to the current price of the oil products at Enid, Oklahoma, on the date of the delivery. In "contract" sales the products are sold at contract price for an agreed period of time plus this same "differential".

In either "spot" or "contract" sales the effect on the public is the same as if title passed to the purchaser at the refinery. The purpose of the broad coverage of the Act was to make it impossible for pipe line carriers to escape its terms upon such technicalities.

In the Valvoline Oil Company case, the company asserted that the oil flowing through its lines was not in commerce until *after* preparation for market, thereby admitting that after such preparation the transportation would be in commerce. In the instant case, the products are refined products being transported to market and are, therefore, transported in commerce.

We think the foregoing conclusions are inescapable from consideration of the plain terms of the Act and the following quotation from the opinion in Pipe Line Cases:

> "*The only matter requiring much consideration is the constitutionality of the act.* That the transportation is commerce among the states we think clear. That conception cannot be made wholly dependent upon technical questions of title, and the fact that the oils transported belonged to the owner of the pipe line is

not conclusive against the transportation being such commerce. The situation that we have described would make it illusory to deny the title of commerce to such transportation, beginning in purchase and ending in sale for the same reasons that make it transportation [fol. 135] within the act. The control of Congress over commerce among the states cannot be made a means of exercising powers not intrusted to it by the Constitution, but it may require those who are common carriers in substance to become so in form. *So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid. So the objection is narrowed to the fact that it applies to lines already engaged in transportation.*" (Emphasis supplied.)

Plaintiff attempts to demonstrate that it does not fall within the coverage of the Act by asserting that it is not in fact a common carrier. The Act makes it a *statutory* common carrier.

The fact, if true, that plaintiff is a private carrier is immaterial since it is covered by the Act and chose to enter the business of transportation of oil products after the enactment thereof.

In our opinion, the plain meaning of the Act as amended is that its provisions apply to *all engaged in the interstate transportation of oil or other commodities, except water and except natural or artificial gas, by pipe line.*

The Act states that its provisions shall apply to "common carriers engaged in * * * the transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line". It then defines the term "common carrier" to include "all pipe line companies * * * and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire".

In the Valvoline Oil Company case the Court, in referring to the last clause of the definition of "common carrier," said:

> "This clause is a conjunctive and not a modifier. It does not affect the generality of the first clause as to pipe-line companies."

The Court said in the Pipe Line Cases in construing the 1906 Amendment:

> "The provisions of the act are to apply to any person engaged in the transportation of oil by means of pipe lines."

Congress intended to include all pipe lines without regard [fol. 136] to whether they were private lines or carried for the public.[1]

In the Valvoline Oil Company case the Court held that the provision in the 1920 amendment that the Act applied to "all pipe line companies" did not narrow the coverage of the Act. *We think this change in verbiage was made for the purpose of making it clear, if any doubt was created by the Uncle Sam Oil Company decision, that all future pipe lines engaged in the interstate transportation of oil or other commodities, except water and natural or artificial gas, were covered by its terms.*

The contention is made that plaintiff is not an interstate pipe line company; that it is a refining company. It is authorized by its charter, among other things, to transport petroleum. It produces and purchases oil, and, through its wholly owned subsidiary, Cimarron Valley Pipe Line Company, transports it by pipe line from points in Oklahoma to its refinery at Enid, Oklahoma, and after refining, transports the products *from* its refinery through its own line to Kansas, Nebraska and Iowa for the purpose of sale. Plaintiff could just as logically take the position that it is a "producer" or "carrier".

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[1] An amendment was suggested in the Senate limiting the coverage to pipe lines "carrying for the public". Senator Lodge opposed this and in sponsoring the amendment as passed stated:

> "But the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come, under this rule, will, as the Senator from Minnesota (Mr. Nelson) says, absolutely destroy the value of my amendment." 40 Cong. Rec. 6361-65.

Valvoline Oil Company was engaged in the refining business, had similar charter powers, and transported oil *to* its two refineries. The Court there stated:

> "There is no controversy over whether appellant is an interstate pipe line company. *Obviously it is.*" (Emphasis supplied.)

As in the Valvoline Oil Company case, plaintiff claims that to hold the Act applicable to it amounts to the taking of [fol. 137] its property without due process of law. This contention is answered by the Court in the Pipe Line Cases. Plaintiff is a "future" pipe line company.

Plaintiff's petition to enjoin and annul the order of the Interstate Commerce Commission should be dismissed. Defendant is requested to prepare and submit findings of fact, conclusions of law and judgment in accordance with the views herein expressed.

[fol. 138] DISSENTING OPINION

VAUGHT, District Judge, dissenting:

I regret the necessity of disagreeing with the majority opinion.

In the majority opinion, however, the facts are fairly and clearly stated, as well as the issue of law.

Were we considering the Act of Congress (49 U. S. C. A. sec. 1(3) for the first time, I might be constrained to agree with my associates in their conclusion. However, the Supreme Court has considered this very question in The Pipe Line Cases, 234 U. S. 548, and Valvoline Oil Company vs. United States et al., 308 U. S. 141.

The question at issue is whether or not, for the purposes of valuation, the pipe line of the plaintiff is a common carrier within the terms of Section 1, Chapter 1, of the Act. (49 U. S. C. A. 1.)

The suit also involves the question of whether the required compliance with the Commission's valuation order would constitute a violation of the Constitution of the United States, by taking property of the plaintiff without just compensation, depriving it of its property without due process, or denying it equal protection of the law.

The pertinent sections of the statute are as follows:

49 U. S. C. A. sec. 1:

"(1) The provisions of this chapter shall apply to common carriers engaged in—

* * * * * * *

"(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water:

(c) * * * from one State * * * to any other State * * *.

* * * * * * *

"3) Definitions. The term 'common carrier' as used in this chapter shall include all pipe-line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping-car [fol. 139] companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire. * * *

49 U. S. C. A. sec. 19a:

"(a) The commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this chapter.

* * * * * * *

"(e) Every common carrier subject to the provisions of this chapter shall furnish to the commission or its agents from time to time and as the commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, * * *."

This case involves the interpretation of the statute as it pertains to the facts presented, and the distinguishing features, if any, between the facts shown in The Pipe Line Cases, supra, and Valvoline Oil Company vs. United States et al., supra.

In The Pipe Line Cases, the court had under consideration the act as it was amended June 29, 1906, 34 Stat. 584

(known as the Hepburn Act), in which section 1(3) then read:

> "That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, * * *."

In the body of the opinion at page 559, the court said:

> "* * * The main question is whether the act does and constitutionally can apply to the several constituents that then had been united into a single line.
>
> "Taking up first the construction of the statute, we think it plain that it was intended to reach the combination of pipe lines that we have described. The provisions of the act are to apply to any person engaged in the transportation of oil by means of pipe lines. The words 'who shall be considered and held to be common carriers within the meaning and purpose of this act' obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but an in- [fol. 140] junction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such. * * * Its evident purpose was to bring within its scope pipe lines that although not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price."
>
> * * * * * * *
>
> "* * * So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid. So the objection is narrowed to the fact that it applies to lines already engaged in transportation. But, as we already have intimated, those lines that we are considering are common carriers now in everything but form. They carry everybody's oil to a market, although they compel outsiders to sell it before taking it into their pipes. * * *"

In that case the Standard Oil Company controlled a number of pipe lines of other organizations, which, when taken together, formed a pipe line for transportation of oil across several states, and as stated by the court, at page 539:

> "* * * To meet the present amendment the Standard Oil Company took a conveyance of the New Jersey and Maryland lines, and the common carrier lines now end at insignificant places where there are neither market nor appliances except those of the Standard Oil, by which it would seem that the whole transport of the carriers' lines is received. * * *
>
> "Availing itself of its monopoly of the means of transportation the Standard Oil Company refused through its subordinates to carry any oil unless the same was sold to it or to them and through them to it on terms more or less dictated by itself. * * *"

There can be no question but that the oil thus transported, at the time of its transportation, was owned by the Standard Oil Company and that it was transporting its own oil through its own pipe line. The court then considered the Uncle Sam Oil Company and held that the facts as to that company did not fall within the description of the act as the transportation by that company was "merely an incident to use at the end," and said:

> "There remains to be considered only the Uncle Sam Oil Company. This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of con- [fol. 141] ducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end." * * *"

The plaintiff contends it falls squarely within the holding as to the Uncle Sam Oil Company.

In Valvoline Oil Company v. United States, supra, Valvoline Oil Company owned a pipe line of 1,426 miles running to 9,020 wells in three states, into which it gathered some 75,000 barrels of oil per month for its two refineries in Pennsylvania which manufactured the products to be distributed to its trade. All of the oil was purchased from producers at the well, 50 per cent. originating in Pennsylvania, 38 per cent. in West Virginia, and 12 per cent. in Ohio. Surplus oil, not needed in its operations in its refineries, was sold to refineries in Pennsylvania and West Virginia; none of which came out of the state of the refinery. Because it did not transport interstate other oil than that which it purchased at the well for its own use, it claimed it was not a common carrier of oil subject to the Interstate Commerce Act, nor that it should be held to come within the terms of the statute. It contended that it was not a common carrier within the provisions of the act, that its pipe line was used primarily to transport oil to its own refineries, and that such transportation was not clothed with a public interest. The court, in passing upon the issues, said (p. 145):

> "In the present Act there is a change of language but we perceive none in meaning. Speaking of the amendments of the Transportation Act of 1920, which recast the Hepburn Amendment into the present form, the House Committee on Interstate and Foreign Commerce reported that the section here under consideration 'amends the first five paragraphs of section 1 of the Commerce Act, making minor corrections and classifying language in several respects, but making no important changes in policy.' As now written the section brings railroads under the Act by means of the [fol. 142] last clause of subsection (3) only. This clause is a conjunctive, not a modifier. It does not affect the generality of the first clause as to pipe-line companies.
>
> "The appellant relies upon the Pipe Line Cases to show that the present act does not cover a pipe line transporting oil for its own refining purposes only. The discussion referred to is that concerning the Uncle Sam Oil Company. But that company's pipe line was used for the '*sole purpose of conducting oil from its own wells to its own refinery.*' This was held

not to be transportation under the Act. Here, however, *it is the purchase from many sources* and subsequent carriage that determine the applicability of the statute to Valvoline." (Emphasis supplied.)

Under the holding in The Pipe Line Cases it was determined that not every "pipe line" that may be engaged in the transportation of oil is a common carrier, within the terms of the statute, even though it transports oil across state lines, and the Uncle Sam Oil Company's line was held to be an exception. In the Valvoline Case that distinction under the statute as amended was recognized and maintained, the court saying: "But that company's pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.'" While in The Pipe Line Cases the court said: "When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end."

Let us now consider the facts in The Pipe Line Cases and the Valvoline Case as distinguished from the facts shown in the instant case.

In The Pipe Line Cases the Standard Oil Company owned or controlled the pipe lines, which were engaged in transporting the oil from many owners. The court described the situation as follows, (234 U. S. 559):

> "Availing itself of its monopoly of the means of transportation the Standard Oil Company refused [fol. 143] through its subordinates to carry any oil unless the same was sold to it or to them and through them to it on terms more or less dictated by itself. In this way it made itself master of the fields without the necessity of owning them and carried across half the continent a great subject of international commerce coming from many owners but, by the duress of which the Standard Oil Company was master, carrying it all as its own. • • •"
>
> • • • • • • •
>
> "• • • It not only would be a sacrifice of fact to form but would empty the act if the carriage to the seaboard of nearly all the oil east of California, were

held not to be transportation within its meaning, because by the exercise of their power the carriers imposed as a condition to the carriage a sale to themselves. * * * Its evident purpose was to bring within its scope pipe lines that although not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price."

In the instant case we have none of these distinguishing features. The Champlin Refining Company is not engaged in "carrying all oil offered" but is carrying only its own refined product. It is not monopolizing "the means of transportation" of oil. It is not refusing to carry oil unless it is sold to it on its terms or any other terms. It simply is not engaged in carrying any oil except its own product, refined at its own refinery, and transported for its own use to its own terminals.

In the Valvoline Case, the Valvoline Oil Company had two refineries in Pennsylvania. Its pipe lines embraced 1,426 miles which ran to 9,020 wells located in Pennsylvania, West Virginia, and Ohio. It gathered from these wells some 75,000 barrels of oil per month for the purpose of refining the produce to be distributed to its trade. It could not use all the oil so gathered in its refineries and sold the surplus to other refineries, located one in Pennsylvania and one in West Virginia. I think the court distinguishes the fact situation in the Valvoline Case from the case at bar when it said: "*Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline.*"

[fol. 144] In the instant case the Champlin Refining Company is not gathering through its pipe line the product it transports. The product it transports originates at its own refinery at Enid, Oklahoma. As so originated, it is owned by the company in its entirety, the pipe line being "merely an incident to use at the end," which is the marketing of its product. And, as stated by the court in the Valvoline Case, supra, in distinguishing between the facts there shown and the facts shown in The Pipe Line Cases, as to the Uncle Sam Oil Company: "But that company's pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.' This was held not to be transportation under the Act.".

Is the general public interested in such transportation as shown in the case at bar? The record does not disclose that anyone has sought to have oil transported through this pipe line. It does not disclose that the company transports any product but its own, nor that it holds itself out to the public as a carrier of the product of any who offer to avail themselves of its facilities, but on the contrary, it discloses that the line is constructed and maintained in such a manner that such facilities would not be available to any such transportation. It merely shows that the Champlin Refining Company refines its own product at its own refinery and transports it to market with its own facilities, for its own use, which use is to place it on the market. Certainly, the fact that the plaintiff added to the price of its products at its terminals what it considered to be a fair sum to cover the cost of transportation, would not and could not interest the buying public. It would have to compete with others at the market who were offering products of a like kind. The record discloses that its means of transportation had cost a large sum of money and that it had to maintain its transportation facilities, if it was an "incident to use at the end."

[fol. 145] There is a distinct difference between a pipe line engaged in *interstate commerce* and a pipe line which is a *common carrier*. In the first instance the pipe line may or may not be a common carrier. The determining factors are the use to which the pipe line is put and the statute which defines "common carrier."

If a pipe line is not operated for hire, then the statute, as construed by The Pipe Line Cases and the Valvoline Case, would not apply.

For the foregoing reasons, therefore, I respectfully dissent to the majority opinion.

[File endorsement omitted.]

[fol. 146] In United States District Court

Petitioner's Objections to the Proposed Findings of Fact Submitted by the Government and the Interstate Commerce Commission—Filed April 13, 1945

Petitioner objects to the proposed findings of fact and conclusions of law submitted by the Government and the

Interstate Commerce Commission in the particulars hereinafter shown, and requests additional findings and conclusions as hereinafter shown.

Objections to Findings of Fact

No. 1

To the use of the word "found," following the word "Commission" and preceding the word "that," in line 6, Paragraph 1, and request that the word "held" be substituted therefor.

No. 2

To the use of the words "gasoline pipe line system," following the word "mile" and preceding the word "consisting," in line 6, Paragraph 2, and request that the words "petroleum products pipe line" be substituted therefor.

No. 3

* * * * * * *

No. 4

* * * * * * *

[fol. 147] No. 5

(a) To add following the word "carrier" and before the word "and" in the third line of Paragraph 5, the following words: "operating wholly within the State of Oklahoma."

(b) To add the word "voluntarily" following the word "involved" and preceding the word "conveyed," in line 11, in Paragraph No. 5; and substitute for the word "plaintiff," being the last word in said sentence, the word "Cimarron."

(c) That following the word "been" and preceding the word "by" in the last line of said Paragraph No. 5, add the word "wholly."

No. 6

(a) To add the words "by the purchasers," after the word "terminals," line 6, Paragraph No. 6, and strike the words, lines 7 and 8, Paragraph No. 6, following the word "trucks," "to dealers and distributors," and substi-

tute therefor the words "at the option of such purchaser or purchasers."

(b) To insert the words "occasionally one or more of such trucks is used to haul gasoline to some jobber or dealer in the same territory," in lieu of the words "to jobbers and dealers," in line 11, Paragraph No. 6.

No. 7

The Petitioner objects to all of that part of the proposed finding No. 7 following the word "product" in line 11 of said Paragraph, and asks that the court substitute in lieu thereof the following:

"When the products line was constructed, it was concluded by the management of the company that products would be marketed at terminals at a delivered price which would, in addition to the F. O. B. charge at the Enid Refinery, include a charge which, for the lack of a better term, was called a differential which was fixed at such sum as would enable Champlin to deliver at the terminal, its products F. O. B. such terminal at a price which, with the purchaser's transportation costs beyond such terminal, would equal the cost at the jobber's place of business of like products of manufacturers competing with the Champlin Company in such territory.

"When the Hutchinson, Kansas, terminal was opened in July, 1935, Champlin established a differential of 3/4ths of a cent per gallon above the Group Three, Oklahoma Refiners, price for delivery to jobbers located in any Kansas point, and 1/4th cent per gallon to jobbers located in Colorado and Missouri. As [fol. 148] Wichita, McPherson and other Kansas refining points were maintaining the same price F. O. B. their refinery for Colorado and Missouri points as the Champlin Company was maintaining F. O. B. Enid, and Champlin immediately eliminated the differential for those points, and reduced the differential to Kansas points to 1/4th cent per gallon. This differential of 1/4th cent per gallon for the State of Kansas was in keeping with the price quoted by Kansas refiners for Kansas destination.

"The Superior, Nebraska terminal opened in August, 1935, was located in an area with no nearby refineries,

and presented an entirely new marketing problem to the Champlin Company. The Champlin Company, therefore, established as the yardstick for differentials the difference between the established rail rates from Oklahoma to points in Nebraska and the newly established rail rates from Oklahoma to points in Nebraska and the newly established rail rates from Superior to points in Nebraska. As no rail rates were made possible from the Superior, Nebraska terminal to points in Colorado, Wyoming, North Dakota and South Dakota, and rail rates were established to a few Iowa points where Champlin plants were being operated, these latter rail rates averaging approximately one-half cent per gallon less than from Group Three (Oklahoma Refiners) the Champlin Company immediately established from the Superior, Nebraska, terminal a differential of one-half cent per gallon to all points in Colorado, Wyoming, North Dakota, South Dakota and Iowa.

"The entire plan of differentials attempted to meet competitors' prices at all destinations. A differential based on rail rates only, governing Champlin's delivered prices at the Superior terminal was found to be inadequate for the purpose intended, viz: to meet competition, inasmuch as products from Kansas refineries were being delivered by truck transports at lesser prices than Champlin products priced upon such basis, and adjustments were therefore made.

"* * * Many adjustments were made in the years of 1936, 1937, 1938, and a material number in 1939, 1940, and 1941. * * *."

No. 8

To the second clause, lines 2 and 3, Paragraph No. 8, for omitting to state "that Champlin has never offered to transport or been asked to transport any products belonging to any other company or person," and asks that the court insert following the word "transported" and preceding the word "any," line 2, Paragraph 8, the words "or offer to transport or been asked to transport;" and that the court add following the word "Company," line 3, Paragraph 8, the words, "or person."

Petitioner also asks that the words "stating transportation *changes*" (sic), line 10, page 5, proposed finding 8, be

stricken, inasmuch as such finding was not made by the Commission (49 Val. Rep. 467) and leaves the erroneous impression that tariffs of some sort have been filed. The fact is as the Commission found,

"No tariffs have been filed * * *."

[fol. 149] No. 9

(a) To the use of the words "pipe line," following the word "integrated" and preceding the word "company," line 1, Paragraph 9, and ask that the court substitute therefor the word "oil," as used in this connection in the findings of the Commission.

(b) To the use of the words "by pipe line of the products" following the word "distribution," line 6, Paragraph 9, and ask that the court substitute in lieu thereof the words "thereof either," as used by the Commission in this connection.

No. 10

(a) To the first sentence of Paragraph 10, for the reason that it impliedly finds that Champlin voluntarily initiated proceedings before the Interstate Commerce Commission, and to make said sentence speak the facts, asks that the court insert following the word "Champlin," line 1, Paragraph 10, the following: "Following a demand by the Interstate Commerce Commission that it file with the Commission facts for valuation of the pipe line for rate making purposes."

(b) To the words, "initiated by," preceding the word "said," in the second line of the second sub-paragraph of Paragraph 10, and to make said paragraph speak the facts, asks the court to substitute in lieu thereof, the words "in relation."

(c) To the use of the word "found," line 8 of the third sub-paragraph of Paragraph 10, for the reason that the matter there referred to is not a finding but a purported law conclusion of the Commission, and asks that the court substitute in lieu of said word, the word "held."

(d) To the first sentence of the fourth sub-paragraph of Paragraph 10, for the failure therein to state that the report on reargument was not concurred in by all members of the

Commission, and to make said sentence speak the facts, requests that the court insert following the word "Commission" in the third line of said paragraph, the following: "with Chairman Patterson and Commissioner Porter dissenting."

(e) To the first use of the word "is" in the second sentence in the fourth sub-paragraph of Paragraph 10.

[fol. 150] No. 11

To all of Paragraph No. 11, for the reason that the same is not a finding of fact, but is an expression of conclusions of law.

Harry O. Glasser, Dan Moody, Counsel for Champlin Refining Company.

[File endorsement omitted.]

[fol. 151] In United States District Court

Petitioner's Objections to Proposed Conclusions of Law —Filed April 13, 1945

No. 1

To Paragraph No. 1, for the reason that it appears from the undisputed evidence in this case that Champlin Refining Company is not "a pipe line company," and is not "a common carrier of petroleum products by pipe line in Interstate Commerce," within the meaning of those terms as used in the Interstate Commerce Act, and there is no evidence upon which such a conclusion of law could be found, and it necessarily follows that Champlin's operations of its pipe line are not subject to the provisions of the Interstate Commerce Act, or to any section or part thereof.

No. 2

To Paragraph No. 2, because it appears from the undisputed testimony, as a matter of law, that Champlin's operations of its pipe line are not subject to the terms of the Interstate Commerce Act, and, therefore, the Interstate Commerce Commission was without jurisdiction to enter the order challenged in this suit.

No. 3

To Paragraph No. 3, because it appears as a matter of law from the undisputed evidence in this case that Champlin's operations of its pipe line are not within the terms of the Interstate Commerce Act, and the Interstate Commerce Commission, therefore, being without jurisdiction, the challenged order could neither be lawful nor valid.

[fol. 152] To the conclusion of law expressed by the majority in its opinion that Section 1 of the Interstate Commerce Act includes in its terms "all pipe lines without regard to whether they were private lines, or carried for the public," and that said section applies to "all engaged in interstate transportation of oil * * * by pipe line."

To the conclusion expressed in the majority opinion of the court that Petitioner is a "statutory common carrier."

To the conclusion expressed in the majority opinion that Champlin, because it moves its oil products by pipe line for the purpose of later marketing them, "is engaged in transportation in commerce within the meaning of the Act."

To the conclusion expressed in the majority opinion that petitioner is a " 'future' pipe line company."

To the conclusion expressed in the majority opinion that the "differential" is a transportation charge.

No. 4

To Paragraph No. 4, because it appears from the undisputed testimony as a matter of law that Champlin is not a common carrier within the meaning of the Interstate Commerce Act, and, therefore, there is no evidence to support the findings of the Commission that Champlin is a common carrier, that it is a pipe line company, and that it is engaged in interstate commerce, within the meaning of the Interstate Commerce Act, or to support either of said findings or conclusions.

No. 5

To Paragraph No. 5, because it appears from the undisputed testimony as a matter of law that the order of the Commission has the effect to take petitioner's property in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 153] No. 6

To Paragraph No. 6, because it appears from the undisputed testimony as a matter of law that the petitioner is entitled to the relief prayed for in its petition, and to an injunction restraining the Commission from enforcing the order promulgated by it against the Petitioner.

Harry O. Glasser, Dan Moody, Counsel for Champlin Refining Company.

[File endorsement omitted.]

[fol. 154] In United States District Court

Order Denying Petition for Rehearing—Filed April 13, 1945

This cause came on to be heard on the 13th day of April, 1945 on the Petition for Rehearing herein, and the court having considered said petition and being fully advised in the premises, It Is Ordered, Adjudged and Decreed that said petition be and the same is hereby denied.

To all of which the Champlin Refining Company excepts.

Dated at Oklahoma City, Oklahoma the day and year above written.

Alfred P. Murrah, Circuit Judge; Stephen S. Chandler, Jr., District Judge.

I am of the opinion that such petition should be granted and, therefore, dissent from the foregoing order.

Edgar S. Vaught, District Judge.

[File endorsement omitted.]

[fol. 155] In United States District Court

Petitioner's Requested Findings of Fact—Filed April 16, 1945

Comes Now, the petitioner and respectfully asks that the following separately numbered findings of fact be entered in this cause in conformity with the findings of the Interstate Commerce Commission in the respective instances noticed:

(1) That no sale of products of any kind or character has ever been made upon agreement or condition that such products would be placed in said pipe line at Enid for delivery through such pipe line.

(2) The Champlin Company does not carry anything for the public, nor for any dealer or marketer or other person, wholesale or retail, for hire, or otherwise, directly or indirectly.

(3) It carries its own products for its own account, to storage tanks in Hutchinson, Superior and Rock Rapids, from which tanks only, if there, for the first time, negotiates and makes sales to dealers who solely determine the means by which such products shall be carried by such purchaser from such tanks to their respective places of business.

(4) That "sales" are made at the storage terminals giving effect to the "differential," so that the jobbers and brokers are enabled to retain a commission and "still sell the product at the delivered price prevailing in the competitive market." (49 Val. Rep. 466).

(5) That the finding of the Commission, 49 Val. Rep. 465, as follows:

> "• • • When the line was nearing completion but before it was put into operation, a change in plans was decided upon which would eliminate the Cimarron Valley from operation outside of the State of Oklahoma in order that the Champlin might complete construction of [fol. 156] the line and operate it as a private-products line without assuming any of the burdens of a common carrier, • • •"

be included in the findings of fact of this court, as such finding so made is of importance in the determination of the ultimate question.

(6) That the third line of finding 5 as proposed by counsel for the Government, be amended to conform with the findings of the Commission (49 Val. Rep. 465) by adding after the words "common carrier," and before the word "and," the words, "operating wholly in the state of Oklahoma," which amendment is vitally important, inasmuch as all oil transported in the Cimarron Valley line for processing for market, through the products line, is Okla-

homa production and has not been in interstate transportation in any way before delivery to the refinery.

(7) The petitioner requests the court, in lieu of the Government's proposed findings set forth in the last sentence of proposal No. 7, at the top of page 5 of proposed findings, to find in part as the Commission did find (49 Val. Rep. pp. 465-6), that,

> "* * * The *products are marketed* at the terminals, sometimes by contract running for a definite period, at a delivered price which in addition to the f. o. b. charge at the Enid refinery includes a charge, called a differential, fixed at a sum which enables the Champlin to deliver these products at the pipe line terminal at a price which, added to the transportation costs beyond the terminal, equals the costs at the jobber's place of business of like products sold by competitors of the Champlin in the territory served. * * * Numerous adjustments have been made in the differentials from time to time as developments in the competitive situation made such changes necessary or expedient."

(8) The petitioner requests the court to further find, as a part of paragraph 7 (set forth in the record, pp. 82, 83 and 84, and undisputed by the Government) as follows:

"* * *"

> "When the Hutchinson, Kansas, terminal was opened in July, 1935, Champlin established a differential of ¾ths of a cent per gallon above the Group Three, Oklahoma Refiners, price for delivery to jobbers located in any Kansas point, and ¼th cent per gallon to jobbers located in Colorado and Missouri. As Wichita, McPherson and other Kansas refining points were maintaining the same price F. O. B. their refinery for Colorado and Missouri Points as the Champlin company was maintaining F. O. B. Enid, Champlin immediately eliminated the differential for those points, and reduced the differential to Kansas points to ¼th cent per gallon. This differential of ¼th cent per gallon for the State of Kansas was in keeping with the price quoted by Kansas refiners for Kansas destination.

[fol. 157] "The Superior, Nebraska terminal opened in August, 1935, was located in an area with no nearby refineries and presented an entirely new marketing problem to the Champlin company. The Champlin company, therefore, established as the yardstick for differentials the difference between the established rail rates from Oklahoma to points in Nebraska and the newly established rail rates from Superior to points in Nebraska. As no rail rates were made possible from the Superior, Nebraska terminal to points in Colorado, Wyoming, North Dakota and South Dakota, and rail rates were established to a few Iowa points where Champlin plants were being operated, these latter rail rates averaging approximately one-half cent per gallon less than from Group Three (Oklahoma Refiners) the Champlin company immediately established from the Superior, Nebraska, terminal a differential of one-half cent per gallon to all points in Colorado, Wyoming, North Dakota, South Dakota and Iowa.

"The entire plan of differentials attempted to meet competitors' prices at all destinations. A differential based on rail rates only, governing Champlin's delivered prices at the Superior terminal was found to be inadequate for the purpose intended, viz: to meet competition, inasmuch as products from Kansas refineries were being delivered by truck transports at lesser prices than Champlin products priced upon such basis, and adjustments were therefore made.

" * * * "

"Many adjustments were made in the years of 1936, 1937, 1938, and a material number in 1939, 1940, and 1941. * * * "

(9) "That the right of eminent domain has never been assumed or exercised by Champlin in connection with this pipe line," as found by the Commission, 49 Val. Rep. 467;

(10) That,

"For some years prior to 1935, the business of the Champlin showed a steady decline, because the construction of refineries in areas near former markets and the operation of pipe lines, barge lines, and transport trucks provided sources of supply near many

customers, all of which was destructive of trade connections of the Champlin in the territory thus affected. The construction of the pipe line resulted in an upward trend in business of the Champlin so that by 1940 the company had reached a volume of business equal to the peak previously enjoyed. That the Champlin meets keen competition in the territory served is indicated by the fact that for the first 6 months of 1941 the total sales of the Champlin in the States of Colorado, Kansas, Nebraska, Iowa, Minnesota, and South Dakota, which are served by the pipe line, equaled 3.5 percent of the whole business of the petroleum industry in those States. This comparison is based on information furnished to the Champlin by the tax-collection officials of the respective States."

in conformity with the findings of the Commission (49 Val. Rep. 464).

No. 11. The petitioner requests the court to find, in accordance with the testimony of L. A. Snyder, Record pp. 71, 72 and 73, as follows:

That the Champlin Company is engaged in marketing [fol. 158] petroleum products through sales representatives in Oklahoma, Kansas, Nebraska, Colorado, Wyoming, North Dakota, South Dakota, Minnesota, Iowa, Wisconsin, Illinois, and Missouri, and that the petroleum products which are marketed, are delivered to the purchaser in the respective states in the following manner:

"* * *".

"Oklahoma, by tank car and transport truck. Kansas, transport truck and tank car from pipe line terminal at Hutchinson, Kansas, and in the case of lubricating oil by company-owned trucks from Enid, Oklahoma. Nebraska, transport truck and tank car from the Superior, Nebraska terminal and the Superior pipe line terminal. Colorado, transport truck from the Hutchinson, Kansas and the Superior, Nebraska terminals. Eastern Wyoming, transport truck from the Superior, Nebraska, terminal. South Dakota, by transport truck from the Superior, Nebraska, and the Rock Rapids, Iowa, terminals. North Dakota, transport truck from the Rock Rapids, Iowa terminal.

Minnesota, by tank car and transport truck from the Rock Rapids, Iowa, terminal. Northern Iowa, by truck and tank car from the Rock Rapids, Iowa, terminal. Southern Iowa, by transport truck from the Superior, Nebraska, terminal. Illinois and Wisconsin, by tank car from the Enid, Oklahoma refinery. Northern Missouri, by transport truck from the Hutchinson, Kansas, terminal. Southern Missouri, by tank car and transport truck from the Enid, Oklahoma refinery.

"* * *"

That the Champlin Company makes investigation in each case as to the type of carrier that such type of truck so employed in any instance happens to be and that such carriers are "private contract" and "common." That these transport trucks are all employed by the jobber who purchases such petroleum products and that the Champlin Company does not have anything to do with the employment of such carriers.

That the Champlin Company owns and operates

"* * * five 3,750-gallon transport trucks stationed at Rock Rapids, Iowa, terminal, by which deliveries are made to Champlin-owned outlets in north central Iowa, Southern Minnesota, and to jobbers and dealers in the same territory."

"* * * that in certain instances the retail branch of the Champlin business employs outside transport carriers to haul by truck refined products from the Enid [fol. 159] refinery, as well as all terminals on the pipe line, to *bulk plants owned by the Champlin Company*, out of which local dealers and consumers are served by tank wagons owned and operated by the Champlin Company."

Respectfully submitted, Harry O. Glasser, Dan Moody, Counsel for Champlin Refining Company.

I think the foregoing Requested Findings of Fact should be adopted by this court.

Dated at Oklahoma City, Oklahoma this 16th day of April, 1945.

Edgar S. Vaught, United States District Judge.

[File endorsement omitted.]

[fol. 160] IN UNITED STATES DISTRICT COURT

PETITIONER'S REQUESTED CONCLUSIONS OF LAW—Filed April 16, 1945

(1) That the operations of the Champlin Company in the use of its products pipe line, do not

(a) make it a "pipe line company" within the provisions of the Interstate Commerce Act,

either as,

(1) a statutory pipe line,

or,

(2) a "common carrier" of petroleum products by pipe line in interstate commerce,

and is, therefore, relieved generally of the requirements of the provisions of the Interstate Commerce Act applicable to common carriers of such products by pipe line in interstate commerce, and more particularly of the provisions of Section 19a of said Act.

(2) That such operations as aforesaid, do not make such products pipe line a "future" pipe line within that term as defined by the Supreme Court of the United States in the Pipe Line Cases, 234 U. S. 548, 58 Law Ed. 1459.

(3) That the Champlin Company is not a pipe line carrier within the meaning of the Interstate Commerce Act.

(4) That the Champlin Company is not a common carrier in its products pipe line operations.

(5) That the Interstate Commerce Commission is without jurisdiction to enter the order complained of.

[fol. 161] (6) That the order of the Interstate Commerce Commission of which petitioner complains, is unlawful and invalid for the want of legislative grant, and/or, constitutional authority to enter the same.

(7) That the findings made in the two reports of the Commission above referred to are wholly insufficient to support the Commission's reports and order.

(8) That the Interstate Commerce Act as construed by the Commission in said reports and order, is violative of

the Constitution of the United States, and the order complained of deprives the petitioner of its constitutional property rights in derogation of the 5th Amendment to the Constitution.

(9) That petitioner's prayer for relief should be granted in the manner and form set forth in its Amended Petition.

Dated at Oklahoma City, Oklahoma this 16th day of April, 1945.

Harry O. Glasser, Dan Moody, Counsel for Champlin Refining Company.

I think the foregoing Requested Conclusions of Law should be adopted by this court.

Dated at Oklahoma City, Oklahoma this 16th day of April, 1945.

Edgar S. Vaught, United States District Judge.

[File endorsement omitted.]

[fol. 162] IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed April 16, 1945

The above-entitled suit coming on to be heard upon the pleadings and evidence, including the complete record of the proceedings before the Interstate Commerce Commission, and counsel for all parties having been heard, and briefs received and considered, and the Court being fully advised in the premises, and having made and filed its written opinion, makes the following findings of fact and conclusions of law:

Findings of Fact

1. This suit was brought under the provisions of the Urgent Deficiences Act of October 22, 1913, to set aside an order of the Interstate Commerce Commission, made on June 12, 1944, in Valuation Docket No. 1267, and was heard and determined by a duly constituted court of three judges pursuant to the provisions of said Act. Said order of the Commission held that petitioner, Champlin Refining Company is a common carrier of refined petroleum products by

pipe line and subject to the provisions of the Interstate Commerce Act, and required said company to comply with the provisions of Valuation Orders Nos. 26 and 27 issued by said Commission made pursuant to Section 19a of the said Interstate Commerce Act.

[fol. 163] 2. The petitioner Champlin Refining Company (hereinafter called the Champlin) is a corporation of the State of New Mexico authorized by its charter to produce, buy, sell, and transport petroleum; to refine petroleum, and to buy, sell, and deal in the refined products of petroleum. The pipe line involved in this suit, which the Champlin owns and operates, is a 516-mile petroleum products pipe line system consisting of welded 6-inch pipe extending from Enid, Okla., to Rock Rapids, Iowa. In connection with the pipe line the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa. The portion of the pipe line from Enid through Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at Rock Rapids were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

3. In addition to the products pipe line involved in this suit, the Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants; oil trucks and other equipment including approximately 149 oil wells on 53 leases in Oklahoma, 45 wells on 13 leases in Kansas, and 52 wells on 10 leases in Texas; approximately 75,000 acres of undeveloped leases situated in Oklahoma, Kansas, Texas, New Mexico, Alabama and Illinois; the oil refinery at Enid, Oklahoma, which processes approximately four and a half million barrels of crude oil annually, producing a complete line of refined oil products; 723 tank cars used to transport the products of the refinery to company bulk plants or to jobbers; approximately 316 filling stations and 248 gasoline and oil bulk distribution tanks; motor trucks used to transport products and in the main-

[fol. 164] tenance and operation of its pipe lines, and various other equipment used to promote the producing, purchasing, and refining of crude oil and the marketing of the products thereof.

4. It also owns all of the stock of the Cimarron Valley Pipe Line Company (hereinafter referred to as the Cimarron) which owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid. The pipe line involved in this case is not used as a gathering line and no crude oil is passed through it.

5. Construction of the portion of the products pipe line from Enid to Superior was undertaken by the Cimarron, which was then and now is, a common carrier operating wholly within the State of Oklahoma and a wholly owned subsidiary of the Champlin. The original purpose was to construct and operate a common carrier pipe line, and a certificate to that effect was issued to the Cimarron by the State of Kansas upon application by it. In connection with the acquisition of right-of-way for this construction, the Cimarron instituted four condemnation suits against seven individuals in the district courts in the State of Kansas, but while the suits were pending, satisfactory settlements were made with the respective contesting owners of the lands, and the suits were dismissed by Cimarron. Before the line was completed or put into operation, the Cimarron on June 10, 1935, executed a bill of sale to the Champlin and made assignment of all rights-of-way that had been acquired in the construction of the property. Since that time the Cimarron has had nothing to do with the further construction or operation of the products pipe line. Construction of the pipe line was completed by Champlin, and operation thereof has been wholly by Champlin.

6. The crude oil from which the products transported by the Champlin in the products pipe line are produced is all originated in the State of Oklahoma and transported to the refinery at Enid by the Cimarron. All of the petroleum products transported through the line involved in this suit [fol. 165] are owned by the Champlin. The products are transported beyond the three pipe line terminals f. o. b. either by rail or by common or contract carrier trucks to dealers and distributors, the carrier being designated

by the purchaser, except that the Champlin operates five 3,750 gallon capacity transport trucks from the Rock Rapids terminals by which deliveries are made to company-owned outlets in North Central Iowa and Southern Minnesota, and to jobbers and dealers in the same territory. Other transport trucks, not owned by Champlin, are employed by the Champlin to haul refined products from the refinery and the three terminals of the pipe line to the 248 bulk tanks owned. From these bulk tanks local dealers and consumers are served by tank wagons owned and operated by the Champlin. The Champlin operates approximately 316 retail filling stations in the territory served by the pipe line.

7. In disposing of its petroleum products at its three terminals in Kansas, Nebraska, and Iowa, respectively, the Champlin uses two types of sales; one is known as the spot-market or date of shipment sale, the other, known as a contract sale, is based on yearly contracts with its customers. In spot sales the price of the product is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices at Enid as shown in the issue of the Thursday preceding date of sale. These prices are made effective at 7:00 a. m. Friday morning and remain in force until the succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The price of the product at the pipe line terminal used includes, in addition to the spot or f. o. b. price at the Enid refinery, an additional sum called a differential. Said differential is computed by subtracting from the through railroad freight rate from Enid to final destination (usually the purchaser's point of business) the carrying charges from the pipe line terminal to final destination. In other words, the so-called differential is adjusted so that the through charge to the [fol. 166] final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. Competitive and other conditions sometimes cause departures from the prices arrived at in accordance with the formula above described. Contract sales are likewise made upon the basis of Enid refinery price plus differential.

8. The Champlin is the sole owner of the products transported through its pipe line; it has never transported,

offered to transport or been asked to transport any products belonging to any other company or person; its pipe line does not connect with any other pipe line but only with storage tanks at the three terminal points; there are no facilities for putting any petroleum product into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the Champlin's storage tanks by means of truck racks or railroad tank car racks and is not made directly from the pipe line in any instance; no tariffs stating transportation charges have been filed with the Interstate Commerce Commission or with any state commission or regulatory body.

9. The Champlin is a fully integrated oil company owning and operating, either directly or through its subsidiary the Cimarron, every facility necessary for the production and the transportation of crude oil by a gathering pipe line, the refining of such crude oil, the transportation by pipe line of the products of its refinery, and the distribution thereof either through jobbers, or directly, to the consuming public.

10. On August 21, 1941, the Champlin, following a demand by the Interstate Commerce Commission that it file with the Commission facts for valuation of the pipe line, filed with the Interstate Commerce Commission a petition alleging that it is not a common carrier subject to the provisions of the Interstate Commerce Act and praying that the Commission so determine its status. It prayed further that it be relieved of the requirement of filing the valuation reports [fol. 167] prescribed by the Commission under the provisions of Section 19a of the Act, which reports had previously been demanded of the Champlin by the Commission's Bureau of Valuation.

The Commission by its Division 2 designated the proceeding in relation to said petition as Valuation Docket No. 1267 and assigned the same for hearing before a Commission examiner. When the matter came on for hearing on November 13, 1941, the Champlin filed an amended petition of the same general purport as that previously filed.

A large volume of evidence both oral and documentary was received at the hearing, and the matter was submitted to Division 2 of the Commission for determination; on December 14, 1942, said division made its report which is set out in the printed pamphlet filed by the plaintiff entitled

"Exhibits to Petition", and is officially reported in volume 49 I. C. C. Valuation Reports, beginning on page 463. In said report it was held that the Champlin is engaged in the interstate transportation of refined petroleum products by pipe line, that it is engaged in interstate commerce and is a common carrier subject to the Interstate Commerce Act. The division concluded that no order was required at that time.

Upon petition of the Champlin the Commission reopened the proceeding for reargument before the entire Commission, and the Commission (with two members dissenting) on June 12, 1944, made its Report on Reargument in which the findings made by Division 2 in the prior report were affirmed; and the Commission ordered the Champlin to comply with the provisions of Valuation Orders Nos. 26 and 27. Said report of the Commission on reargument, is correctly set out in petitioner's "Exhibits to Petition" above referred to, and is officially reported in Volume 49 of I. C. C. Valuation Reports at page 549.

[fol. 168] Conclusions of Law

The Court states the following conclusions of law:

1. That the Champlin Refining Company is a pipe line company and is a statutory common carrier of petroleum products by pipe line in interstate commerce, and is subject to the provisions of the Interstate Commerce Act applicable to such common carriers, including, in particular, Section 19a of said Act.

2. That the Interstate Commerce Commission had jurisdiction to enter the order complained of.

3. That the order which the plaintiff here seeks to set aside is a lawful and valid order of the Interstate Commerce Commission.

4. That the findings made in the two reports of the Commission above referred to are sufficient to support the Commission's order and that the evidence received by the Commission is sufficient to support said reports and order.

5. That the Interstate Commerce Act as construed by the Commission in said reports and order is not violative of any provision of the Constitution of the United States and that

the Commission's order deprives the plaintiff of no constitutional right.

6. That the bill of complaint herein is without merit and should be dismissed at the cost of the plaintiff.

This 16th day of April, 1945.

Alfred P. Murrah, United States Circuit Judge; ——— ———, United States District Judge; Stephen S. Chandler, Jr., United States District Judge.

I hereby dissent from the foregoing findings of fact and conclusions of law.

Edgar S. Vaught, United States Dist. Judge.

[File endorsement omitted.]

[fol. 169] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559

CHAMPLIN REFINING COMPANY, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent,

INTERSTATE COMMERCE COMMISSION, Intervener

FINAL DECREE—Filed April 16, 1945

This cause having come on for final hearing and the Court having handed down its written opinion and made and filed its findings of fact and conclusions of law;

It is ordered, adjudged, and decreed, That the Plaintiff's petition be, and it is hereby, dismissed at the plaintiff's cost.

This April 16th, 1945.

Alfred P. Murrah, United States Circuit Judge; Stephen S. Chandler, Jr., United States District Judge.

I dissent to the entry of this decree.

Edgar S. Vaught, United States District Judge.

[File endorsement omitted.]

[fol. 170] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 16, 1945

The Champlin Refining Company, petitioner in the above entitled case, conceiving itself aggrieved by the final decree entered by this court in the above entitled cause on the 16 day of April, 1945, does hereby appeal, in conformity with the provisions of Sections 47 and 47a, Title 28, United States Code, from said final decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that a transcript of the record, proceedings, exhibits and papers upon which said final decree was made, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Harry O. Glasser, Dan Moody, Counsel for Champlin Refining Company.

[File endorsement omitted.]

[fol. 171] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed April 16, 1945

Now, on this 16 day of April, 1945, the Champlin Refining Company, having filed its petition praying for the allowance of an appeal from the Decree entered herein on April 16, 1945, to the Supreme Court of the United States, and it appearing that the petitioner has filed its assignment of errors, and having in all respects conformed with the rules of court and the statutes controlling, it is

Ordered and Adjudged that the appeal be and the same is hereby allowed as prayed for, upon the filing of an appeal bond in the sum of One Thousand and no/100 ($1,000.00) Dollars, with sufficient surety to be approved by the court.

Alfred P. Murrah, Circuit Judge; Edgar S. Vaught, District Judge; Stephen S. Chandler, Jr., District Judge.

[File endorsement omitted.]

[fol. 172] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed April 16, 1945

Comes Now, the Champlin Refining Company, petitioner in the above entitled cause, and files the following assignment of errors, upon which it will rely in the Supreme Court of the United States upon the prosecution of its appeal to that court, from the final decree entered in this court on the 16 day of April, 1945, in the above entitled cause.

That the United States District Court for the Western District of Oklahoma, erred—

1. In entering, for the want of equity, the decree dismissing the petition of the Champlin Refining Company for a permanent injunction.

2. In holding that the Champlin Refining Company is a common carrier in the operation of its products pipe line and as such, engaged in interstate transportation of oil by pipe lines within the provisions of Section one (1) of the Interstate Commerce Act and, therefore, subject to the provisions of Section 19(a) of the Act.

[fol. 173] 3. In holding that the order of the Interstate Commerce Commission entered, June 12, 1944, directing and requiring the Champlin Refining Company to comply with the provisions of the commission's valuation order No. 26, was within the commission's constitutional statutory powers.

4. In holding that the petition of the Champlin Refining Company for an injunction permanently enjoining the enforcement of such order, should be dismissed.

5. In holding that the Interstate Commerce Commission has regulatory authority and control over the operations of the products pipe line of the Champlin Refining Company.

6. In refusing to find and hold that the Champlin Refining Company, in the operation of its products pipe line, was not engaged in an enterprise in which the public has, or had, any interest whatsoever and is not, therefore, subject to any regulatory provisions of the Interstate Commerce Act.

7. In failing and refusing to give and accord proper legal force and effect to the evidence of record in the case.

8. In making and entering, over the objection of petitioner, its final decree of April 16, 1945.

9. In failing and refusing to define the status of the petitioner to be that of an integrated company solely engaged in producing and refining crude oil and marketing the products thereof.

10. In failing and refusing to extend to the petitioner the benefit of the exception granted the Uncle Sam Company in the Pipe Line Cases, 234 U. S. 548, 58 Law Ed. 1459, which exception there granted to that company, is determinative of the rights of this petitioner in this case.

[fol. 174] 11. In failing and refusing to recognize the force of the statement of Mr. Justice Cardozo in Pennsylvania R. Co. v. Public Utilities Commission, 298 U. S. 170, 80 Law Ed. 1130, that,

> "If the concept of transportation is in need of expansion, it is for the legislative department of the government to determine how great the change should be, * * *"

and to give this petitioner the benefit of the principles announced in that decision, which are also determinative of the petitioner's rights in this litigation.

12. In failing and refusing to extend to the petitioner the benefit of the rule announced by Mr. Justice Van Devanter in Producers Transportation Co. v. Railroad Commission of the State of California, 251 U. S. 228, 64 Law Ed. 239, wherein it is said:

> "It is, of course, true that if the pipe line was constructed solely to carry oil for particular producers under strictly private contracts, and never was devoted by its owner to public use, that is, to carrying for the public, the state could not, by mere legislative fiat or by any regulating order of a commission, convert it into a public utility or make its owner a common carrier; for that would be taking private property for public use without just compensation, * * *"

See, Associated Oil Co. vs. Rail Road Commission, 176 Cal. 518, 169 Pac. 62, L. R. A. 1918C, P. U. R. 1918B.

13. In its findings of fact entered over the objections and exceptions of petitioner, in the following numbered findings of fact, to-wit:

No. 2, because of the finding that, the pipe line involved is a "pipe line system."

No. 6, because of the finding *that the* "products are *transported* beyond the three pipe line terminals F. O. B. either by rail, or by common or contract carrier trucks to dealers and distributors, the carrier being designated by the pur- [fol. 175] chaser, except that * * *"

No. 7, for all that part thereof which reads as follows:

"Said differential is computed by substracting from the through railroad freight rate from Enid to final destination (usually the purchasers point of business) the carrying charges from the pipe line terminal to final destination. In other words, the so-called differential is adjusted so that the through charge to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation from the refinery by rail or other means to final destination."

No. 8, in so far as it assumes, if it does so assume, that tariffs have been filed by petitioner.

14. In its conclusions of law entered over the objections and exceptions of petitioner, in the following numbered conclusions:

Nos. 1, 2, 3, 4, 5 and 6.

15. Petitioner further assigns error upon the part of the majority of the Court for failure to grant petitioner's requested findings of fact,

Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11.

All of which are fully supported in the record, and in most instances by findings of the Commission.

16. Petitioner further assigns error upon the part of the majority of the Court for failure to grant petitioner's requested conclusions of law,

Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9.

All of which are fully supported in the record and by [fols. 176-177] the decisions of the Supreme Court of the United States.

17. Petitioner assigns error upon the refusal of the majority of the Court to grant its objections Nos. 2, 5b, 6, 7, 8 and 10 to the Governments proposed findings of fact.

18. Petitioner assigns error upon the refusal of the majority of the Court to grant its objections Nos. 1, 2, 3, 4, 5 and 6 to the Governments proposed conclusions of law.

19. In overruling and denying petition for rehearing.

Harry O. Glasser, Dan Moody, Counsel for Champlin Refining Company.

[File endorsement omitted.]

[fol. 178] In United States District Court

Notice of Appeal—Filed April 17, 1945

To United States of America, Respondent, Interstate Commerce Commission, Intervener.

Please take notice that pursuant to the statutes and rules of Court in such case made and provided the Champlin Refining Company, Petitioner in the above entitled cause, does hereby appeal to the Supreme Court of the United States from the Final Decree of the District Court made and entered on the 16th day of April, 1945, which sustained the Order of the Interstate Commerce Commission for the valuation of the pipe line properties of the Champlin Refining Company. Attached hereto is a copy of the petition for appeal and order allowing appeal, the assignments of error and the statement as to jurisdiction. Your attention is further directed to the provisions of Rule 12, Paragraph 3.

Harry O. Glasser, Dan Moody, Counsel for Champlin Refining Company.

I hereby certify that I mailed a copy of the foregoing notice of appeal to Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Washington, D. C., and

Edw. Dumbauld, Department of Justice, Washington, D. C., this 17th day of April, 1945.

Theodore M. Filson, Clerk, U. S. District Court.

Service of a copy of the foregoing notice of appeal is hereby acknowledged this 17th day of April, 1945, together with papers attached to said notice.

Charles E. Dierker, United States District Attorney.

[File endorsement omitted.]

[fol. 179] In United States District Court

Notice to the Attorney General of the State of Oklahoma—Filed April 17, 1945

To the Honorable, the Attorney General of the State of Oklahoma:

Pursuant to the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 221, you are hereby notified that the Petitioner, the Champlin Refining Company, in the above entitled cause, has taken an appeal to the Supreme Court of the United States from the final decree of the United States District Court for the Western District of Oklahoma, entered April 16, 1945, and the order allowing the appeal makes the same returnable within forty (40) days from the date thereof.

Harry O. Glasser, Dan Moody, Counsel for Champlin Refining Company.

Service of a copy of the foregoing notice is hereby acknowledged this 17th day of April, 1945, together with the papers attached to said notice.

Randell S. Cobb, Attorney General, State of Oklahoma.

[File endorsement omitted.]

[fol. 180] IN UNITED STATES DISTRICT COURT

APPLICATION FOR AUTHORITY TO TRANSMIT TO THE SUPREME COURT OF THE UNITED STATES ORIGINALS OF CERTAIN EXHIBITS—Filed April 17, 1945.

Comes now the Champlin Refining Company and respectfully asks that an order of this Court be entered granting leave to the Clerk of said Court to transmit to the Clerk of the Supreme Court of the United States upon appeal, and as a part of the record, original Exhibit X filed with the Interstate Commerce Commission, together with the originals of Exhibits C, D, F, and G attached to the petition for rehearing in this cause and in support of this application, states that each of said exhibits is voluminous and the cost of making copies thereof would be very great.

That, inasmuch as same will be printed in the Supreme Court, such copies thereof will be promptly supplied by the petitioner for the records of this Court, as soon as printed, and that upon completion of said case in the Supreme Court, the Clerk of that Court will return such originals to this Court.

Harry O. Glasser, Dan Moody, Counsel for Champlin Refining Company.

[File endorsement omitted.]

[fol. 181] IN UNITED STATES DISTRICT COURT

ORDER TO TRANSMIT ORIGINAL EXHIBITS—Filed April 17, 1945

Now on this 17th day of April, 1945, the application of petitioner for authority authorizing the Clerk of this Court to transmit to the Clerk of the Supreme Court of the United States, as a part of the record upon appeal, the originals of certain exhibits in this case, being duly presented and the Court being advised, finds that such application should be granted, and it is so ordered.

Alfred P. Murrah, Circuit Judge; Stephen S. Chandler, Jr., District Judge; Edgar S. Vaught, District Judge.

[File endorsement omitted.]

[fol. 182] IN UNITED STATES DISTRICT COURT

REPORTER'S TRANSCRIPT OF PROCEEDINGS OF OCTOBER 12, 1944

* * * * * * *

[fol. 183] Mr. Glasser: Before we proceed I desire to ask leave to file an amendment to the petition. Under the rule if this amendment had been proposed before answer it would have been as a matter of right, but inasmuch as it follows the answer we think we must have leave of court.

Murrah, J.: Any objection?

Mr. Thomas: We have no objection that we are able to make at this time. Copies were just handed to us a few minutes ago. The proposed amendment contains over a dozen different paragraphs and obviously it is impossible for us to decide what we would like to do, but we would [fol. 184] like ten days to file such pleadings as we deem proper in response.

Murrah, J.: Leave is granted to amend.

* * * * * * *

[fol. 185] The Court: You can do so at this time.

Mr. Glasser: In the first place, we have here in the court room and which have been presented to the Court, certified copies of the complete transcript from the Interstate Commerce Commission, including the briefs. It is really divided into three sub-divisions. The briefs are in one part, the pleadings and orders and stipulations. All incidental papers together with all exhibits are bound together. They are in sequence, and then there is a transcript of the testimony taken before the Commission. Now I would like to offer those documents in evidence, not the briefs. We have certified copies of the briefs, but I do not want to offer the briefs in evidence, but I would like to offer the balance of the certification from the Interstate Commerce Commission in evidence.

Mr. Thomas: No objection.

Murrah, J.: They will be made a part of this record by agreement of the parties.

Mr. Glasser: There might become a question as to the extent or how far the offer goes, but we would like to make the offer for the purpose of showing what was before the Commission. In other words, it is a complete set up of what was before the Commission.

[fol. 186]. Murrah, J.: Do you want to make an offer of the briefs?

Mr. Glasser: No.

Murrah, J.: I don't quite understand you.

Mr. Glasser: We want to offer all the balance of the record that is certified as being the full record before the Commission with the exception of the briefs.

Mr. Thomas: What does that consist of?

Mr. Glasser: The certificate is on the top showing the contents.

Murrah, J.: You and Mr. Thomas take that and make the record. You will have no difficulty about it. You may confer and when you get ready to make a statement dictate it into the record.

Mr. Thomas: Counsel might read them off. We can soon tell whether we will agree to them or not. The first ones I see no objection to.

Mr. Glasser: We merely want the Court to understand we are offering everything before the Commission except the briefs.

Murrah, J.: And the Court also understands that the government doesn't object to the offer.

Mr. Thomas: To any portion of the Commission's record except the briefs which, of course, are not proper evidence. [fol. 187] Mr. Glasser: Let the record show the certificate covers the petition filed August 21, 1941; stipulation dated October 23, 1941; second stipulation dated November 10, 1941; transcript of the stenographer's notes of the hearing held November 12, 1941 at Washington, D. C. and Exhibits 12 and No. 1 to 11, both inclusive and from 13 to 50, both inclusive filed at said hearing. There was no No. 12.

Mr. Thomas: The Commission's record shows there was no No. 12.

Mr. Glasser: The amended petition filed November 13, 1941. I am not offering these briefs. The next item will be the report of the Commission filed December 14, 1942; the petition for rehearing, reargument and reconsideration filed February 10, 1943; the order of the Commission entered April 5, 1943, granting the rehearing; the report and order of the Commission entered June 12, 1944; petition for rehearing and facation of report and order of the Commission on reargument filed July 24, 1944; order of the Commission entered July 26, 1944 and the order of the

Commission entered September 2nd, 1944 that extended the time within which this order would be made effective.

Mr. Thomas: There is no objection.

Mr. Glasser: We also desire to offer in evidence that which is identified in the Commission's records as Exhibit 10, ten being in Roman numerals. That was the report [fol. 188] which we tendered the Commission in the beginning which they refused to accept because they said it wasn't in proper form. It doesn't recognize us to be a common carrier and for that reason we not received but we desire to offer it in evidence.

Murrah, J.: For what purpose?

Mr. Glasser: For the purpose of showing we have given them all the information for all purpose which could possibly have aided them in their opinion.

Mr. Thomas: We object to that for the reason the order of the Commission requires compliance with certain valuation orders. Those valuation orders are set up in a certain form and require specific information relative to the property of the carrier. This information, the Commission's Bureau of Valuation held, was not in accordance with those requirements and it refused to receive it.

Mr. Glasser: It was received in evidence.

Mr. Thomas: The Bureau of Valuation did not receive it and the matter then came before the Commission on the applicant's petition and the Commission made the order which is involved in here.

Murrah, J.: You have tendered this as a tentative compliance.

Mr. Glasser: As a complete compliance.

[fol. 189] Murrah, J.: The Commission says that is not a compliance.

Mr. Glasser: That is correct.

Murrah, J.: We therefore refuse to accept it.

Mr. Glasser: They sent it back to us.

Murrah, J.: You say in any event you don't have to tender it because you are not within the Act.

Mr. Glasser: We offered this for information purposes, regardless of whether we are a common carrier or are not. It was received in evidence before this Commissioner and we thought it would necessarily be received in evidence here.

Murrah, J.: You do not ask the Court to hold it is a compliance?

Mr. Glasser: No. We offer it to show our good faith in this matter.

Murrah, J.: It will be admitted for that purpose.

Mr. Dumbauld: I am not clear whether this was in evidence in this case.

Mr. Glasser: It was.

Mr. Thomas: It was not admitted in evidence.

Mr. Glasser: Yes, Mr. Kelley admitted it in evidence.

Mr. Dumbauld: Of course, we have no objection to any-[fol. 190] thing that was in evidence, but I don't see why it isn't in this record if it was.

Mr. Glasser: It is in the record and was certified.

Mr. Thomas: If it was a part of the record before the Commission I think it should be admitted here.

Murrah, J.: Let it go in. The Court will admit it in evidence. However, I think I should make this observation, that we do not think it is material to prove any issue in this law suit, but since it is offered to show good faith it is admitted for that purpose.

Mr. Glasser: The transcript shows at Page 9 that it was marked for identification and received in evidence.

Mr. Thomas: It should be admitted here.

Murrah, J.: Very well.

Mr. Glasser: We desire also to offer in evidence a minute which was admitted in that file and I have a certified copy.

Mr. Dumbauld: I object to this. It seems to me the intention of the Commission in bringing the case doesn't enter in here because it appears that this case which was before this Court was actually instituted by the petition filed by the plaintiff with the Commission and these preliminary matters I don't think are pertinent.

[fol. 191] Murrah, J.: We are not concerned about why the Commission elected to take a case or instituted proceedings.

Mr. Thomas: We object to it here for the reason this record shows this case arises not from any action taken by the Commission in that proceeding but arises from the petition filed by this plaintiff asking the Commission to eliminate it from the list of carriers required to make that valuation return.

Murrah, J.: You may be assured this Court will not decide this law suit upon the question of whether it was a test case or not. It is admitted in evidence.

Mr. Glasser: I merely offer it for the purpose of showing why we had to come in Court.

Murrah, J.: You are here.

Mr. Glasser: We started the case and this is the reason why we had to start it.

Murrah, J.: It is admitted in evidence for what it is worth.

Mr. Glasser: Printed in the volume of exhibits which was filed with the petition in this Court as an appendix, or as Exhibit A, are copies of the correspondence that passed between the Commission and the Champlin Company before this case was filed which shows the entire background of the case and the positions of the respective parties as [fol. 192] evidenced by that correspondence. We have had the Commission take one of these exhibits and check the exhibits as they are printed and have made them conform with the originals that are on file and they certified the same to be true copies corrected in ink and contain true copies of telegrams and letters on file in the office of the Commission. That is offered for the purpose wholly of showing the background of the case in event any of the matters contained therein become important. Then we will have the proof in the record.

Mr. Thomas: We submit that is immaterial since this arose by petition rather than any request upon the Champlin Company for its compliance with the valuation order.

Vaught, J.: Was that introduced in evidence before the Commission?

Mr. Glasser: Yes, sir. It was offered in evidence and the examiner refused to let it become a part of the record. We tendered it as Item No. 5. It arose in this fashion: Upon the conclusion of the case counsel asked us to furnish certain items for the record. We furnished Items 1, 2, 3 — and 5, four of them for their benefit and No. 5 for our benefit. The examiner received 1, 2, 3 and 4 and they are in the record but he refused to let this go in the record and the only way I can show it was tendered is to show or offer the certified copy.

[fol. 193] Mr. Dumbauld: We do not object to the authenticity of the items at all but merely to their relevancy and materiality because they relate to prior negotiations.

Mr. Glasser: If the Court will hear me for a moment I will tell you why it is pertinent, our reasons why we say it is pertinent.

Mr. Thomas: I submit that calls for a conclusion. He should ask what happened.

Murrah, J.: Overruled.

A. By the Witness: Under Valuation Order No. 26, revised December 31, 1934, we were required to prepare and file, maps, charts and schedules. Under Valuation Order No. 27, April 12, 1935, we were required to prepare and file inventory. Being a pioneer in the industry we had no records available and it was necessary for us to——

Mr. Thomas: We must object to that. That is some-
[fol. 202] thing peculiar to his company, and it has also been held that the expense of compliance with a valuation order is not the taking of property without due process.

Murrah, J.: Overruled.

A. By the Witness: Not having the data available we found it necessary to engage a department solely for that purpose. It required to prepare that data a period of about one year and at an approximate cost of $25,000. We were then required by the Bureau of Accounts to change our accounting system to confirm with their requirement. At a subsequent date we were required by the Department of Justice to file tariffs which was done under protest.

Mr. Dumbauld: If the Court pleases, I think this is going far afield——

The Court: Make your objection.

Mr. Dumbauld: I object.

Murrah, J.: Overruled. You gentlemen feel free to make your objections but don't argue the point.

Mr. Dumbauld: I suppose we will have the opportunity of cross-examination?

Murrah, J.: I think so. That is a part of the system. I agree with you. I don't think it has a thing in the world to do with this case, but this is not a court of last resort.

By Mr. Glasser:

Q. Do you have a letter from Mr. Thurman Arnold in
[fol. 203] your possession?

A. Yes, sir.

Q. Will you produce it please. (Witness produces letter.) Is that the original?

A. It is.

Vaught, J.: It appears to me your law suit consists of the interpretation put on this statute by the Supreme Court. That is the way I look at it.

Mr. Glasser: Of course, that is correct and that is our position, but we feel we are in duty bound to make a complete record here because this is an important case, and the reason this is important is because in this correspondence is a letter from the Commission telling the Champlin Company that they were not common carriers and that it did not need to comply with this thing, and they sent us back papers that shows administrative interpretation over a long period of years, from 1906 to 1941, 35 years administrative interpretation. Now suddenly the administrative interpretation changes. We think the government is bound by the administrative interpretation.

Mr. Dumbauld: If there is any interpretation it would be from a subordinate employee of the Commission.

Murrah, J.: The Court sustains the objection to its admission.

[fol. 194] Mr. Glasser: We desire to offer the papers which have been identified as Exhibit A, and that offer is made by reason of a letter of April 27, 1936 by M. O. Lorenz, Director of Statistics, which reads as follows:

April 27, 1936.

"Mr. Nathan Scarritt, Attorney, Champlin Refining Company, Enid, Oklahoma.

Dear Sir:

Receipt is acknowledged of your letter of April 21, 1936, concerning the operations of the Champlin Refining Company.

It is understood from the information furnished that respondent uses this pipe line as a plant facility only; that it has never transported or offered to transport the products of any other person, firm, or corporation through this line, either as a common carrier or by contract; and that it files no tariffs with this Commission.

In view of these conditions, would advise that an annual report need not be filed with this Commission for the year 1935, and the report forms P which were sent to you should be returned to this Bureau. For your convenience

in returning these forms, I am enclosing an addressed label which may be used and requires no postage.

Yours very truly, M. O. Lorenz, Director of Statistics."

[fol. 195] Mr. Thomas: The Commission's Bureau of Statistics?

Mr. Glasser: Yes, sir.

Mr. Thomas: Not the Valuation Bureau.

Murrah, J.: That will be excluded from the record.

Mr. Glasser: One further document. In connection with the document which has just been excluded, I have a certified copy of a letter dated December 11th, 1941, addressed to Mr. Bartel, Secretary of the Commission in tendering the document which has just been excluded. I assume that will be excluded also.

Murrah, J.: Yes, sir.

Mr. Glasser: Also a copy of a letter which the Commission wrote to us stating why it was in the record and we make that tender.

Murrah, J.: Objection sustained.

Mr. Glasser: We want to offer a witness, the comptroller of the Valvoline Pipe Line Company and we would like to do that after Mr. Thomas makes his statement in this case.

Murrah, J.: You will be permitted to do so.

(Hereupon Court adjourned until 1:30 o'clock p. m. this day.)

* * * * * * *

[fol. 196] J. J. Dunlevy, called as a witness by the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Glasser:

Q. State your name.
A. J. J. Dunlevy.
Q. Where do you live?
A. Butler, Pennsylvania.
Q. With what concern are you connected?
A. The Valvoline Oil Company.
Q. And in what capacity with that concern?
A. As manager of the Valvoline Pipe Lines Department.

Q. Were you connected with the Valvoline Company at the time the litigation arose between the Valvoline Company and the United States in the matter of the pipe line facilities of your company?

A. I was.

Q. And were you a witness in that case?

A. I was.

Q. Have you been continuously connected with the Valvoline Company since the decision of the Supreme Court of the United States in that case?

A. Yes, sir.

Q. Do you have personal knowledge of what the company has been required to do and what it has done?

A. Yes, sir.

[fol. 197] Q. And to the expense it has been put to in making compliance with the orders of the Commission?

A. Yes, sir.

Mr. Glasser: Now if you want to make some objection——

Mr. Thomas: There is no question before the witness, if the Court pleases. As I understand, this is evidence which was not presented to the Commission.

Mr. Glasser: That is correct.

Mr. Thomas: In the case of Tagg Brothers, 280 U. S. 420, the Supreme Court pointed out that the determination of the validity of the Commission order must be determined by the statutory court upon the evidence that was submitted to the Commission, and therefore, I object to extraneous evidence.

Mr. Dumbauld: I want to object on the further ground that this deals with a different company and is absolutely immaterial and irrelevant to any issue in this case.

Mr. Glasser: May I just be heard a moment. In the case of United States versus Idaho which followed the Tagg case, which Mr. Thomas cited, Justice Brandeis considered the Tagg case, and made the contrary rule laid down in the Idaho case which was an Interstate Commerce Commission case. He said: "The District Court concluded that [fol. 198] the Talbot branch was constructed and has been maintained for the purpose of serving a single industry; that practically no other industry is served; that this trackage does not invade new territory; that its continued operation or abandonment is of local and not of national concern; that it is therefore a spur; and hence, that the

order of the Interstate Commerce Commission was in excess of its jurisdiction." Then he says compare Tagg Brothers vs. U. S. 280 U. S. 420. Then Justice Brandeis went on to say: "Although it would have been better practice to have introduced all relevant evidence before the Commission, as appellee's counsel concede, the court did not err in admitting the additional testimony. For whether certain trackage is a spur is a mixed question of fact and law left by Congress to the decision of a court—not to the final determination of either the federal or a state commission." So we say it is a question of mixed law and fact and under U. S. vs. Idaho is admissible.

Mr. Thomas: I am familiar with that case. That was a case where the Commission had authorized abandonment under Section 1, Paragraphs 18 to 20 of the Interstate Commerce Act and it was contended that the Commission had no jurisdiction because of the fact it was a spur which was excepted, and not a branch line, and the case was heard before the Commission and the Commission made what has [fol. 199] been spoken of in some of the cases as a preliminary determination that it was a branch line and not a spur, and then one suit was brought to set aside the order of the Commission authorizing the abandonment, and the State made the point that it didn't come within the jurisdiction of the Commission, and the court held in such a case where the question as to jurisdiction was involved the extraneous evidence might be produced. Does this witness know and can he testify whether the Champlin Company is a pipe line company under the statute? I submit he cannot.

Murrah, J.: No, we will not permit him to do that.

Mr. Glasser: We are not offering him for any such purpose. The analogy is that here we challenge the jurisdiction.

Murrah, J.: Objection overruled for the present. Proceed.

Mr. Glasser: We want to be fair with counsel. We propose to prove by this witness what the Valvoline Company has been required to do by the Commission since the adverse decision by the Supreme Court, solely for the purpose of meeting the situation in this case that we are confronted with by Justice Reed's opinion with regard to the Valvoline case which we say was a determining factor in

that case inasmuch as they say they are standing on the [fol. 200] Valvoline case.

Murrah, J.: You want to show by this evidence that not only was the Valvoline Company injured or prejudiced by the requirement but that you would likewise be?

Mr. Glasser: Exactly.

Murrah, J.: Prejudiced or hurt or a burden placed upon you.

Mr. Glasser: Unnecessarily we think.

Murrah, J.: In other words, you are not required to respond unless you are within the jurisdiction of the Commission?

Mr. Glasser: That is correct.

Murrah, J.: If the question of whether you are hurt, so to speak, has anything to do with the jurisdiction of the Commission this testimony may be relevant. Otherwise, it isn't. In my view it is not.

Mr. Thomas: His statement was that he wished to show what the Commission required. I submit that the only way a Commission can make a requirement is by an order, and I submit that he must, in order to even qualify him to testify to that and to prevent it from being merely an opinion of his, it will be necessary for him to show some order of the Commission against somebody.

Mr. Dumbauld: It is speculative in dealing with the future.——

[fol. 201] Murrah, J.: However we might outline the scope of the testimony of this witness, you propose to show by him that the Valvoline was prejudiced by this requirement and that you would likewise be prejudiced?

Mr. Glasser: We are fearful if we do not do so the same language used in the Valvoline case might apply to us.

Murrah, J.: The court is of the view that we will permit the witness to testify in that respect.

Mr. Glasser: I do that because of their answer. Mr. Dumbauld states in Paragraph 7——

Murrah, J.: We will proceed with the witness. Make your record.

By Mr. Glasser:

Q. Will you tell the court briefly the first thing the Valvoline was required to do after the decision came down from the Supreme Court?

Mr. Thomas: On behalf of both defendants we object to that letter as incompetent, irrelevant and immaterial.

Mr. Glasser: Just a moment until I identify it a little further. Who is Mr. Thurman Arnold?

A. Attorney for the Department of Justice.

Mr. Dumbauld: As of what date?

Mr. Glasser: As of October 11, 1941.

Murrah, J.: I don't understand that he is attorney for the Department of Justice now.

Mr. Glasser: This is dated October 11, 1941.

By Mr. Glasser:

Q. Was this letter received subsequent to the filing of your valuation data?

A. Yes.

Mr. Dumbauld: I object on the further ground that this is not a requirement but an inquiry.

(The letter referred to above identified as Plaintiff's Exhibit 1.)

Murrah, J.: Objection sustained.

Mr. Glasser: I may be permitted to offer the letter and objection is sustained?

[fol. 204] Murrah, J.: Yes, sir.

Mr. Glasser: Exception.

By Mr. Glasser:

Q. Did the Valvoline Company file tariffs after this letter was received?

A. We did.

Mr. Thomas: Objected to on the ground it is all irrelevant and immaterial.

Murrah, J.: We will permit the witness to state that they did file the tariffs.

Mr. Glasser: I will withdraw that part of the question which fixes the time.

By Mr. Glasser:

Q. You did file the tariffs?

A. We did.

Mr. Glasser: May we be permitted to offer the original and substitute a photostatic copy?

Murrah, J.: Yes, sir.

Mr. Glasser: You may cross-examine.

Mr. Thomas: We move the testimony of this witness be stricken out as a whole because it is incompetent, irrelevant and immaterial.

Murrah, J.: Overruled, with the understanding, of course, that the Court will determine its materiality and relevancy to the issue involved in the decision of this case. We do not now see that it does have any materiality at all. We will let it go in.

[fol. 205] Cross-examination.

By Mr. Dumbauld:

Q. When you spoke about being required by the Department of Justice to file a tariff, I take it you were just giving your construction of this letter that you have exhibited from Thurman Arnold. Is that correct?

A. We were told to come to Washington to discuss this thing and an appointment was made for us by Mr. Arnold to meet with a Mr. Asbelt and a Mr. Weaver, I believe, which was done. If I may be permitted to refer to notes I took at the time we were there I can tell you what the discussion was.

Q. That is not quite responsive to the question. Were you talking about this letter that came from Thurman Arnold which has been offered but excluded?

A. We were required by Thurman Arnold to file tariffs and that was the letter asking us if we had.

Q. When you say Thurman Arnold required you, you are speaking about this letter of October 11, 1941?

A. Yes. We replied to that letter and stated we had not filed any tariffs. Then he made an appointment for us to come to Washington to discuss the thing and when we were there he told us we were required to file tariffs.

Q. Did you see Mr. Arnold himself?

A. We did see Mr. Arnold himself and then he referred us to Mr. Asbelt and Mr. Weaver in Room 3501, the Department of Justice, October 14, 1941.

[fol. 206] Mr. Thomas: On behalf of the Commission I object to this testimony as to any personal interview he had with Mr. Arnold.

Murrah, J.: As far as I am concerned it hasn't a thing to do with this law suit. I don't mean to criticize the government's examination. I think it is a waste of time. I think you are dealing in the realm of fantasy here.

Mr. Dumbauld: I think so. I will desist in the interest of time.

(Witness excused.)

Mr. Glasser: That is the Champlin Company's case.

Murrah, J.: What says the Commission?

Mr. Thomas: The government and Commission have no evidence if the Court pleases.

[fol. 207] IN UNITED STATES DISTRICT COURT

REPORTER'S TRANSCRIPT OF PROCEEDINGS OF APRIL 13, 1945

Now on this 13th day of April, 1945, the above cause comes on to be heard before Hon. Alfred P. Murrah, Circuit Judge, Hon. Edgar S. Vaught and Hon. Stephen Chandler, District Judges, on the application of the petitioner for a rehearing.

Appearances: Mr. Harry Glasser of Enid, Oklahoma, and Mr. Dan Moody of Austin, Texas, for the petitioner. Mr. Charles E. Dierker, United States District Attorney, for the respondents.

[fol. 208] (During the presentation and argument on the motion for rehearing in the foregoing cause, the following proceedings, among others, took place:)

Mr. Moody: * * * Your Honors, whether you say as to present conduct or as to the future, it ultimately comes to the same point, the same end, it takes property, and it takes it without due process of law. It takes it without any sort of process of law.

Murrah, J.: Let's go back. I certainly want to say so far as I am concerned that as far as the interpretation or construction of the statutory language is concerned, I have no difficulty in finding that Congress intended to make the Champlin Pipe Line Company a common carrier within the meaning of this statute. I agree with you that the Supreme Court has not gone that far. There isn't any

question about it as far as I am concerned. They have refused to go that far. I will put it that way. I say they have refused to do so. I don't know. I can't tell from reading those decisions whether they thought Congress could not do it or Congress did not intend to do it, but I am perfectly willing for them to clear it up, but it does worry me, the question of whether or not we are giving an unconstitutional construction to that. We are not unmindful of the force of our decision. I am not; and I am [fol. 209] sure my associates are not. I am pretty sure Judge Vaught isn't, and Judge Chandler and I discussed it in detail. If the Interstate Commerce Commission said to you, "Mr. Moody, you cannot transport your merchandise from Texas to Oklahoma unless you offer to transport all other merchandise, the merchandise of your neighbors and competitors," I agree with you. I don't think they could do that. That is the Clayton case. "You just can't force me to engage in a business I am not disposed to engage in." That is, not under due process. That is involuntary servitude as far as that is concerned. But say the Texas-Empire Pipe Line Company starts down here and goes to some place in Illinois, and transports all kinds of gasoline for hire, all of those matters become corelated to a public interest. That is the point I have in mind.

Mr. Moody: All right, your first point, that the Supreme Court has refused to go as far as this Court has gone.

Murrah, J.: I don't think they have gone that far.

[fol. 210] In United States District Court

Reporter's Transcript of Proceedings of April 16, 1945

Now on this 16th day of April, 1945, the above cause comes on for further hearing before Hon. A. P. Murrah, Circuit Judge; Hon. Edgar S. Vaught and Hon. Stephen Chandler, District Judges.

Appearances: Mr. Harry Glasser for the petitioner. Mr. Charles E. Dierker, United States District Attorney, for the respondent.

[fol. 211] Proceedings

Murrah, J.: You may proceed.

Mr. Glasser: We have tendered certain requested findings of fact and I would like to have the record show that

the Court has overruled them. I understand they are denied in toto.

Murrah, J.: Very well.

Mr. Glasser: Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, are each and severally denied to which the petitioner is granted an exception, and that Judge Edgar S. Vaught believes the requested findings should be allowed.

Murrah, J.: And thereupon the majority of the Court files its findings of fact and conclusions of law.

Mr. Glasser: I would like to make my objections to the proposed findings of fact.

Petitioner's objections to the findings of fact submitted by the Government and Interstate Commerce Commission are thereupon presented to the Court, and by the majority of the Court overruled, being objections to proposals Nos. 1, 2, 5, 6, 7, 8, 9, 11 and 11.

Murrah, J.: They are denied orally so far as they are covered——

Mr. Glasser: By the findings of fact of the Court.

Mr. Dierker: I believe the word "majority" should go in there, "as covered by the findings of a majority of the Court.

[fol. 212] Murrah, J.: The Court's conclusions of law are filed this date.

Mr. Glasser: Let the record show the petitioner's objections to proposed conclusions of law Nos. 1, 2, 3, 4, 5, and 6 are denied by the majority action of the Court, and I would like to have Judge Vaught note that he thinks the objections are well taken.

Murrah, J.: That is all right. You are entitled to make your record in your own way.

Mr. Glasser: I also have a supporting document entitled: "Petitioner's requests for conclusions of Law," which are merely intended to lay a predicate for requested conclusions. Let the record show the majority of the Court denies petitioner's requested conclusions of law, Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 and also that Judge Vaught enter his approval of the requested conclusions.

I desire to present to the Court a form of final decree which I think is an exact copy of the Government's final decree, except that the majority members sign above and Judge Vaught signs below.

I now desire to present to the Court a petition for the allowance of an appeal which is statutory.

I also present a form of order allowing the appeal and I think that document should have all three signatures. [fol. 213] The assignments of error must be filed at the time the appeal is allowed, and I now tender that document for filing.

We offer an appeal bond in the amount of a thousand dollars signed by one of the authorized Federal surety companies.

Murrah, J.: I will be glad to sign it.

Mr. Glasser: I notice in the Valvoline cases that all of the judges signed.

Statement of jurisdiction which must be filed originally in the Supreme Court is also submitted.

Praecipe for transcript is also tendered. That completes the papers on appeal.

[fol. 214] CERTIFICATE OF COURT REPORTER

I, B. R. Simpson, hereby certify that I reported in shorthand the proceedings in the foregoing case, and that the foregoing pages are a correct and complete transcript of my shorthand notes in said proceedings, as purported to be set out therein.

B. R. Simpson, Court Reporter.

[fol. 215] IN UNITED STATES DISTRICT COURT

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed October 3, 1944

To Theodore M. Filson, Clerk, District Court of the United States for the Western District of Oklahoma:

You will please prepare a Transcript of Record in the above entitled cause, to be forthwith transmitted to the Supreme Court of the United States pursuant to the appeal to said court heretofore taken in the above entitled cause by the above named Champlin Refining Company, petitioner, and incorporate in said transcript, the following:

1. Petition in this court.
2. Volume of Exhibits to said petition.
3. Order of August 10, 1944, assigning for hearing and calling in Honorable Alfred P. Murrah, U. S. Circuit Judge,

and Honorable Edgar S. Vaught, U. S. District Judge, for three Judge hearing.

4. Answer of Interstate Commerce Commission, Intervener.

5. Answer of the United States of America.

6. Amendment to petition filed October 12, 1944.

7. Amended petition before the Interstate Commerce Commission, with all exhibits thereto attached and filed therewith, including Exhibit "X", being report tendered the Commission.

8. Transcript of testimony before Interstate Commerce Commission in question and answer form.

9. Exhibit #1, Application of Cimarron Valley Pipe Line Company.

10. Exhibit #2, Transcript of testimony on hearing at Topeka, Kansas on February 21, 1935.

11. Exhibit #3, Papers in connection with condemnation suits filed in district courts of the State of Kansas.

12. Exhibit #4, Bill of Sale of Cimarron Valley Pipe Line Company to Champlin Refining Company.

[fol. 216] 13. Exhibit #5, Assignment of right-of-way.

14. Exhibit #6, Champlin balance sheet, first six months of 1941.

15. Exhibit #7, Total sales, first six months of 1941.

16. Exhibit #8, Superior, Nebraska terminal differentials.

17. Exhibit #9, Rock Rapids, Iowa terminal differentials, effective June 11, 1941.

18. Exhibit #10, Supplement No. 1 Rock Rapids, Iowa terminal differentials issued June 20, 1941.

19. Exhibit #11, Supplement No. 2 Rock Rapids, Iowa terminal differentials issued Sept. 20, 1941.

20. Exhibit #12, Identification number already used on Ernest Lewis letter of July 22, 1941.

21. Exhibit #13, Supplement No. 1 Rock Rapids, Iowa terminal differentials June 20, 1940.

22. Exhibit #14, Petroleum quotations October 28, 1941 Chicago Journal of Commerce.

23. Exhibit #15, Refinery and sea board prices and sales contract data.

24. Exhibit #16, Certificate of incorporation of Champlin Refining Company and attached papers.

25. Exhibit #17, Certificate of incorporation of Cimarron Valley Pipe Line Company and attached papers.

26. Exhibit #18, Amendment to certificate of incorporation of Cimarron Valley Pipe Line Company, dated Mar. 20, 1935.

27. Exhibit #19, Appointment of resident agent for Cimarron Valley Pipe Line Company.

28. Exhibit #20, Certificate of change in capital stock of Cimarron Valley Pipe Line Company.

29. Exhibit #21, Certificate authorizing Cimarron Valley Pipe Line Company to engage in business in State of Kansas.

30. Exhibit #22, Appointment of agent for Cimarron Valley Pipe Line Company in State of Nebraska.

31. Exhibit #23, Certain instruments relating to qualification of Cimarron Valley Pipe Line Company to do business in the State of Nebraska.

32. Exhibit #24, In the matter of the applications of the Cimarron Valley Pipe Line Company for authority to transact business in the State of Kansas.

33. Exhibit #25, Order in the matter of the application of the Cimarron Valley Pipe Line for certificate of conveyance and necessity in the State of Kansas.

34. Exhibit #26, List of counties in Oklahoma, Kansas and Nebraska in which an application in the form attached, was filed with the Board of County Commissioners of each of said counties.

[fol. 217] 35. Exhibit #27, List of counties from Enid, Oklahoma to Superior, Nebraska, authorizing the construction of the pipe and telephone lines in question, in the form of order hereto attached.

36. Exhibit #28, License from the State Highway Commission of Oklahoma to the Cimarron Valley Pipe Line Company.

37. Exhibit #29, Form of application for excavation, filed with the State Highway Commission of the State of Kansas, with attached papers.

38. Exhibit #30, Application for excavation permit from the State of Nebraska, with attached papers.

39. Exhibit #31, List of the counties from Superior, Nebraska to Rock Rapids, Iowa, in which applications in the form attached was filed with the respective boards of county commissioners.

40. Exhibit #32, List of counties in Nebraska with form of order entered by the County Commissioners of such counties.

41. Exhibit #33, Supplementary order of Board of County Commissioners of Nuckolls County, Nebraska, and attached papers.

42. Exhibit #34, Order and attached papers, County Board of Cunning County, Nebraska.

43. Exhibit #35, Pipe Line right-of-way and attached papers, Union County, South Dakota.

44. Exhibit #36, Application for excavation permit Bureau of Roads and Irrigation, State of Nebraska.

45. Exhibit #37, Copies of certain letters.

46. Exhibit #38, Letter to and permit from the War Department.

47. Exhibit #39, Application for permit to construct pipe line on State Highway right-of-way in Iowa, and attached papers.

48. Exhibit #40, Application for permit to construct pipe line on State Highway right-of-way in Iowa, and attached papers.

49. Exhibit #41, Certified copies of application and attached papers, Iowa State Commerce Commission.

50. Exhibit #42, Permanent permit No. 126, Rock Rapids lateral.

51. Exhibit #43, Letter to Iowa State Commerce Commission.

52. Exhibit #44, Permanent permit No. 157 and attached papers Iowa State Commerce Commission.

53. Exhibit #45, Valuation Order No. 26 Revised, and attached papers.

54. Exhibit #46, Valuation Order No. 27 and regulations and instructions to govern the preparation and filing of field inventories.

55. Exhibit #47, Letter of G. E. Leverton and attached papers.

56. Exhibit #48, Memorandum of G. E. Leverton and attached papers.

57. Exhibit #49, Champlin balance sheet, December 31, 1941.

[fol. 218] 58. Exhibit #50, Recommendation that test case be instituted against Champlin Refining Company.

59. Report of the Commission, submitted May 20, 1942, decided Dec. 14, 1942, 49 Val. Rep. 463.

60. Order of April 5, 1943, granting reargument and reconsideration.

61. Report of the Commission submitted June 1, 1943, decided June 12, 1944, 49 Val. Rep. 541.

62. Order of June 12, 1944, requiring Champlin Company to comply with provisions of Valuation Orders Nos. 26 and 27.

63. Order of July 26, 1944, overruling and denying petition for rehearing and vacation of report.

64. Order of September 2, 1944, postponing effective date of order of June 12, 1944.

65. Transcript of October 12, 1944, proceedings in this court.

66. Majority opinion and dissenting opinion, filed March 21, 1945.

67. Petitioner's petition for rehearing, with Exhibits A, B, C, D, E, F, and G.

68. Order of April 13, 1945, denying petition for rehearing.

69. Petitioner's objections to findings of fact submitted by Government and Interstate Commerce Commission.

70. Petitioner's objections to Conclusions of Law.

71. Petitioner's Requested Findings of Fact.

72. Petitioner's Requested Conclusions of Law.

73. Findings of Fact and Conclusions of Law of Court.

74. Transcript of Proceedings of April 16, 1945.

75. Final Decree.

76. Petition for Appeal.

77. Order Allowing Appeal.

78. Assignment of Errors by Petitioner.

79. Appeal Bond, approved and filed April 16, 1945.

80. Notice of Appeal, with proof and acceptance of service.

81. Notice to Attorney General of the State of Oklahoma, with acceptance of service.

82. Application to transmit original Exhibit X, and Exhibits C, D, F, and G, attached to Petition for rehearing.

83. Order Granting Leave to Transmit such Original Exhibits.

[fol. 219] 84. Statement of Jurisdiction.

85. This Praecipe for Transcript of Record.

Harry O. Glasser, Dan Moody, Counsel for Champlin Refining Company.

We have notice of filing this praecipe and acknowledge receipt of a copy of same, Apr. 17, 1945.

—— ——, Solicitor General of the United States;
—— ——, Attorney, Interstate Commerce Commission; Charles E. Dierker, United States District Attorney, Western District of Oklahoma.

[File endorsement omitted.]

[fol. 220] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 221] In United States District Court

[Title omitted]

Stipulation—Filed June 4, 1945

Now on this 4th day of June, 1945, at Oklahoma City, Oklahoma, it is stipulated by Harry O. Glasser, of counsel for the Champlin Refining Company and Charles E. Dierker, United States District Attorney for the Western District of Oklahoma, that B. R. Simpson, the court reporter of the above named court, shall forthwith transcribe such portions of his notes not heretofore transcribed, covering the proceedings upon petition for rehearing in the above entitled cause, had on April 13, 1945, as shall thereby fully set forth all questions, observations and colloquy between the members of the court and counsel for the respective parties, to such extent as shall indicate the full context in each such instance, and that when the same shall have been so transcribed, the transcription thereof shall be filed with the clerk of the above named court who shall forthwith certify a [fol. 222] true copy thereof and transmit the same to the Clerk of the Supreme Court of the United States to be filed in the appeal in this cause, No. 1269, October term, 1944 in that court promptly upon receipt thereof. It being further agreed that counsel for the appellees shall be authorized to designate out of time the printing of such portions thereof as they shall deem necessary.

Harry O. Glasser, of counsel for Champlin Refining Company. Charles E. Dierker, U. S. District Attorney, Western District of Oklahoma, of counsel for the United States of America and Interstate Commerce Commission.

[File endorsement omitted.]

[fol. 223] IN UNITED STATES DISTRICT COURT

[Title omitted]

TRANSCRIPT OF PROCEEDINGS OF APRIL 13, 1945

Now on this 13th day of April, 1945, the above cause comes on to be heard before Hon. Alfred P. Murrah, Circuit Judge, Hon. Edgar S. Vaught and Hon. Stephen Chandler, District Judges, on the application of the petitioner for a rehearing.

APPEARANCES:

Mr. Harry Glasser of Enid, Oklahoma, and Mr. Dan Moody of Austin, Texas, for the petitioner.

Mr. Charles E. Dierker, United States District Attorney for the respondents.

[fol. 224] (The following pages are a transcript of a part of the proceedings had in the foregoing cause.)

Mr. Moody: * * * Now then the court comes along in the Valvoline case and says this new statute, this amendment, did not change the law as enacted in 1906, and to verify that holding Mr. Justice Reed quoted from the report of the Committee of Congress that it was not intended to make a change in policy, so that the statute before the court, according to the holding of the Supreme Court in the Valvoline case—the 1920 statute meant the same thing as the 1906 statute. In that case, the government contended again——

Murrah, J.: May I interrupt there? I regard that as the crucial point in the lawsuit, so far as I am concerned It is true Justice Reed said that the 1920 amendment was merely a clarification of the 1906 Act, and made no fundamental change in the law. As you say, Congress evidently so understood, as evidenced by comment made in the Congressional Record. Now at that time the Senator from Ohio sought an amendment which apparently was intended to do the very thing you are arguing for in this case. That is to say, he evidently recognized that the 1906 Act did not confine itself merely to common carriers for hire, but also covered pipe lines which were private in character. Senator Lodge said in reply to the statements of the Senator from Ohio that his amendment provided that no pipe line, unless

it carried for the public, shall come under this rule, as the Senator from Minnesota said it would absolutely destroy the value of his amendment. What do you say about that?

[fol. 225] Mr. Moody: As I understand, you read from the argument in Congress at the time the Hepburn amendment was before the Senate in 1906.

Murrah, J.: Yes, that is correct.

Mr. Moody: That is what was said, and that may be looked to for the interpretation of the statute where the statute is not clear; where there is ambiguity. Now Mr. Justice Holmes in the Pipe Line Cases referred to the history of the times. I do not recall that he quoted the debates in Congress, but he looked at the history of the times and he found in the statute, or failed to find in the statute of 1906, a Congressional or legislative intent to reach private carriers, notwithstanding that debate in Congress.

Murrah, J.: I think that answer is forcible, indeed.

Mr. Moody: Let me say this further. In construing a statute, where it is ambiguous, you may look to the debates in the legislative body to determine the meaning, but the fact that a proposed amendment to an Act while pending in Congress or in the State Legislature, was not adopted, does not necessarily mean that the Act did not already accomplish the very purpose that the proposed amendment which was rejected was intended to accomplish.

Murrah, J.: But Senator Lodge was the author of the amendment which passed. In other words, his version of the Act became the law, as I understand it.

[fol. 226] Mr. Moody: That is correct. The amendment as a whole bears the name "Hepburn", but it was Senator Lodge's amendment to the Hepburn Act.

* * * * * * *

Mr. Moody: The next proposition, and this is a case in which Judge Murrah sat, is the case of the Interstate Commerce Commission vs. Clayton. There Clayton was buying his coal in Utah, and moving it by private means to another state, Nevada, for sale, and that was the purpose, the sale of coal and the sale was at a profit. Now the issue in that case was whether Clayton was a common carrier under the Motor Carrier Act, which reaches all common carriers. You had there——

Murrah, J.: Or contract carrier.

Mr. Moody: Common carrier or contract carrier.

Murrah, J.: It was also treated in the Act.

Mr. Moody: Yes.

Murrah, J.: In other words, in that case we held that the transportation was an incident to the sale of coal.

Mr. Moody: Yes, sir, and he was not under the Act. There you had the transportation of a commodity by private means across a state line for the purpose of sale and there you had the opportunity to determine whether Clayton came under the Act, and you had there a square case to hold what this court has held, and you failed to hold it or did not hold it——

[fol. 227] Murrah, J.: Permit me to say in that connection, I think your analogy is fair, factually. I can see no material difference in the facts in that case and in this case. But the answer is, we are dealing with the language of a different statute.

* * * * * * *

Mr. Moody: * * * We have said at the beginning in the written argument and here in the oral argument, that the Supreme Court has twice been urged to adopt the very construction which Your Honors have given the Act in this case. It has been urged with respect to the original 1906 Act and with respect to the 1920 Act, and in neither case did they do it.

Murrah, J.: I don't think there is any doubt about it. They urged it and the court refused to go that far.

Mr. Moody: They urged it in two places and the court did not go that far. * * *

* * * * * * *

Mr. Moody: * * * The Congress can regulate the use of the highway by interstate travel under the Commerce clause for the purpose of protecting the roads, the public, the health and life of the community; regulate speed and regulate rates, but to say I cannot take my automobile and drive from Austin, Texas to Oklahoma City, unless I agreed to carry in my automobile every person along the road who asked me to ride, as long as I have room for them, [fol. 228] at reasonable rates, would be to take my property, my automobile and private property that I have not devoted to a public use, and attempt to devote it to a public use, which violates the Fifth Amendment to the Constitution of the United States——

Murrah, J.: As I understand the force of that argument, as I interpret it, we have in the majority opinion—the construction we have placed upon this statute is to give an otherwise perfectly constitutional statute an unconstitutional interpretation.

Mr. Moody: You have said in one sentence what I have been in several hours trying to say. Yes, sir, that is exactly it.

Murrah, J.: In other words you say to us in a very forceful way, to Judge Chandler and, why in the world do you take a perfectly constitutional statute which is aimed at a very definite thing, the enterprises which are engaged in a business embraced with a public interest and therefore clearly within the power of Congress to regulate and within the power of Congress to delegate authority to regulate by an administrative body such as the Interstate Commerce Commission, and so construe this statute as to reach out and take private property and convert it to public use or regulate it, as if it were delegated to a public use, is more than you can see or understand.

Mr. Moody: Yes, that is what I'm saying. I am saying this, that the Supreme Court of the United States has helped you out on that point and shown you how to construe it.

[fol. 229] Murrah, J.: There is no consolation in what Justice Reed said in the Valvoline case or Justice Holmes said in the Pipe Line Cases or Standard Cases. There is no sanction for what we said in those cases.

Mr. Moody: That is what I'm trying to say, Your Honor.

Murrah, J.: Then suppose that we say, and it is quite apparent that we have said, that we can't look at the plain language of this statute, but we say it applied to all pipe line companies which transport petroleum products in interstate commerce and that all of such pipe line companies —and instead of using the word "who" we say "are"— "and all of such transportation companies are hereby constituted common carriers within the meaning of this Act." That is the construction we have placed on it. As you say that is a violent construction. We say it isn't, and we are still not convinced it isn't, but there is this point that I should like to call to your attention, and which I would like to have you discuss at your convenience, and that is Justice White's dissenting opinion in the Pipe Line Cases wherein he makes the plain observation that if they would so convert the Uncle Sam property, that would be an un-

constitutional conversion. You mentioned that and quoted from Justice White's opinion, and I certainly give great weight to it, if that philosophy is to control this case but if that is correct, and I agree with you and want to meet you on common ground in that respect, that we have, in effect, taken private property devoted to a private use, with the exception they are engaged in a private enterprise, that is, they are engaged in transporting their gas-[fol. 230] oline to the point of destination, and we have said that when you do that you are within the meaning of this statute and are a common carrier.

Mr. Moody: That is the point you are hanging on—that they are transporting it to a point of market——

Murrah, J.: Yes. I didn't mean to emphasize that. We have said that you are a common carrier when you do that. You say that under Justice White's opinion, and contend that Justice Holmes held the same thing, that would be that you take my property and convert it to a public use in violation of the due process clause of the Constitution. How do you square that with the in futuro doctrine?

• • • • • • •

Mr. Moody: • • • Your Honors, whether you say as to present conduct or as to the future, it ultimately comes to the same point, the same end, it takes property, and it takes it without due process of law. It takes it without any sort of process of law.

Murrah, J.: Let's go back. I certainly want to say so far as I am concerned that as far as the interpretation or construction of the statutory language is concerned, I have no difficulty in finding that Congress intended to make the Champlin Pipe Line Company a common carrier within the meaning of this statute. I agree with you that the Supreme Court has not gone that far. There isn't any [fol. 231] question about it as far as I am concerned. They have refused to go that far. I will put it that way. I say they have refused to do so. I don't know. I can't tell from reading those decisions whether they thought Congress could not do it or Congress did not intend to do it, but I am perfectly willing for them to clear it up, but it does worry me, the question of whether or not we are giving an unconstitutional construction to that. We are not unmindful of the force of our decision. I am not, and I am sure my associates are not. I am pretty sure Judge Vaught

isn't, and Judge Chandler and I discussed it in detail. If the Interstate Commerce Commission said to you, "Mr. Moody, you cannot transport your merchandise from Texas to Oklahoma unless you offer to transport all other merchandise, the merchandise of your neighbors and competitors," I agree with you. I don't think they could do that. That is the Clayton case. "You just can't force me to engage in a business I am not disposed to engage in." That is, not under due process. That is involuntary servitude as far as that is concerned. But say the Texas-Empire Pipe Line Company starts down here and goes to some place in Illinois, and transports all kinds of gasoline for hire, all of those matters become correlated to a public interest. That is the point I have in mind.

Mr. Moody: All right, your first point, that the Supreme Court has refused to go as far as this Court has gone.

Murrah, J.: I don't think they have gone that far.

* * * * * * *

[fol. 232] Mr. Moody: There is one other point I wish to discuss, then I am through. That is with respect to the differential. The court states in its opinion that the differential is the amount which added to the f. o. b. price at Enid, equals the "through rail haul" to point of destination——

Murrah, J.: Permit me to interrupt there. The court had this in mind at the conclusions of the argument; that if we sustain our views previously expressed, that we would give counsel an opportunity to argue that proposed finding.

Mr. Moody: I was going to say this. You will find instances, for example, there is no differential charge for shipments out of Superior, Kansas, and you will find all shipments in Iowa, Nebraska and Montana—there are some six states out there where the differential is the flat half a cent. The testimony is, it is all based upon competitive prices.

Murrah, J.: I think that point may be well taken. We will certainly give you an opportunity to be heard in that respect. I believe that goes to a question of fact and not one of law.

Mr. Moody: I think the question there involved a finding of fact, * * * whereas the court in its opinion has treated it as a matter of law, the conflict in testimony——

Murrah, J.: I am not quite sure about that. I don't want to curtail your argument in that respect in any sense. If you desire we will hear you on that now.

Mr. Moody: I don't want to break in on a fact discussion. I have said it in a more logical way in what we have [fol. 233] printed than what I have said orally.

Murrah, J.: I want to say, Mr. Moody, that I am perfectly willing and glad for you to say that this case stands alone and that our decision stands alone, and I recognize that, and furthermore, I want it understood, as far as I am concerned, that I concur in the opinion with that full knowledge, and I concur in it with that in mind, and I still have it, "Why in the world do they want to regulate an enterprise of this kind?"

* * * * * * *

Mr. Moody: Let me say this, that when I said "it stands alone" I would not have said that except for one of the remarks the court has made, and from the further fact I felt it was not a new question. If it had been a new question, I never would have said that. My point is, as it now stands it is against the opinion of the Supreme Court.

Murrah, J.: Our opinion goes further than the Supreme Court went in either case in which this matter has been before it. I don't think there is any doubt about that. My answer to that is, that the Supreme Court didn't go that far; did not have to go that far; it was not required to go that far and it stopped there for that reason.

Mr. Moody: In the Uncle Sam case, I think the Uncle Sam Company could only have been brought under the Act by the court going as far as the majority has gone in this [fol. 234] case, and the court held the Uncle Sam Company was not under the Act. Therefore I say the Supreme Court refused to hold what Your Honor has held.

Murrah, J.: That is our point of difference exactly. I say when Congress said all pipe line companies, with no exceptions, "are hereby constituted common carriers within the meaning of the Act," they meant that.

[fol. 235] CERTIFICATE

I, B. R. Simpson, hereby certify that I reported in shorthand the proceedings had in the above entitled cause on

the application of the petitioner for re-hearing on April 13, 1945, and that the foregoing pages are true and correct transcript of my shorthand notes of the part of the proceedings therein transcribed.

B. H. Simpson, Court Reporter, United States District Court for the Western District of Oklahoma.

[fols. 236-237] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 238-239] IN THE UNITED STATES SUPREME COURT

CHAMPLIN REFINING COMPANY, Appellant,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellees

Appeal from the United States District Court for the Western District of Oklahoma

Supplemental Transcript—Filed May 28, 1945

[fol. 240] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW PROPOSED BY DEFENDANTS UNITED STATES AND INTERSTATE COMMERCE COMMISSION—Filed May 23, 1945

The above-entitled suit coming on to be heard upon the pleadings and evidence, including the complete record of the proceedings before the Interstate Commerce Commission, and counsel for all parties having been heard, and briefs received and considered, and the Court being fully advised in the premises, and having made and filed its written opinion, makes the following findings of fact and conclusions of law:

Findings of Fact

1. This suit was brought under the provisions of the Urgent Deficiencies Act of October 22, 1913, to set aside an order of the Interstate Commerce Commission, made

on June 12, 1944, in Valuation Docket No. 1267, and was heard and determined by a duly constituted court of three judges pursuant to the provisions of said Act. Said order of the Commission found that plaintiff, Champlin Refining Company is a common carrier of refined petroleum products by pipe line and subject to the provisions of the Interstate Commerce Act, and required said company to comply with the provisions of Valuation Orders Nos. 26 and 27 issued by said Commission made pursuant to Section 19a of the said Interstate Commerce Act.

[fol. 241] 2. The plaintiff Champlin Refining Company (hereinafter called the Champlin) is a corporation of the State of New Mexico authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell and deal in the refined products of petroleum. The pipe line involved in this suit, which the Champlin owns and operates, is a 516-mile gasoline pipe line system consisting of welded 6-inch pipe extending from Enid, Okla., to Rock Rapids, Iowa. In connection with the pipe line the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kans., Superior, Nebr., and Rock Rapids, Iowa. The portion of the pipe line from Enid through Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at Rock Rapids were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant faciiities as of December 31, 1940, was $3,189,028.66.

3. In addition to the products pipe line involved in this suit, the Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, oil trucks and other equipment including approximately 149 oil wells on 53 leases in Oklahoma, 45 wells on 13 leases in Kansas, and 52 wells on 10 leases in Texas; approximately 75,000 acres of undeveloped leases situated in Oklahoma, Kansas, Texas, New Mexico, Alabama and Illinois; the oil refinery at Enid, Okla., which processes approximately four and a half million barrels of crude oil annually, producing a complete line of refined oil products; 723

tank cars used to transport the products of the refinery to company bulk plants or to jobbers; approximately 316 [fol. 242] filling stations and 248 gasoline and oil bulk distribution tanks; motor trucks used to transport products and in the maintenance and operation of its pipe lines, and various other equipment used to promote the producing, purchasing, and refining of crude oil and the marketing of the products thereof.

4. It also owns all of the stock of the Cimarron Valley Pipe Line Company (hereinafter referred to as the Cimarron) which owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid. The pipe line involved in this case is not used as a gathering line and no crude oil is passed through it.

5. Construction of the portion of the products pipe line from Enid to Superior was undertaken by the Cimarron, which was then and now is, a common carrier and a wholly owned subsidiary of the Champlin. The original purpose was to construct and operate a common carrier pipe line, and a certificate to that effect was issued to the Cimarron by the State of Kansas upon application by it. In connection with the acquisition of right-of-way for this construction, the Cimarron instituted four condemnation suits against seven individuals in the district courts in the State of Kansas, but while the suits were pending, the respective owners of the lands involved conveyed to the Cimarron the lands involved at agreed prices, and the suits were dismissed by plaintiff. Before the line was completed or put into operation, the Cimarron on June 10, 1935, executed a bill of sale to the Champlin and made assignment of all rights-of-way that had been acquired in the construction of the property. Since that time the Cimarron has had nothing to do with the further construction or operation of the products pipe line. Construction of the pipe line was completed by Champlin, and operation thereof has been by Champlin.

[fol. 243] 6. The crude oil from which the products transported by the Champlin in the products pipe line are produced is all originated in the State of Oklahoma and transported to the refinery at Enid by the Cimarron. All of the petroleum products transported through the line involved in this suit are owned by the Champlin. The products are

transported beyond the three pipe line terminals either by rail or by common or contract carrier trucks to dealers and distributors. The Champlin operates five 3,750 gallon capacity transport trucks from the Rock Rapids terminals by which deliveries are made to company-owned outlets in North Central Iowa and Southern Minnesota, and to jobbers and dealers in the same territory. Other transport trucks, not owned by Champlin, are employed by the Champlin to haul refined products from the refinery and the three terminals of the pipe line to the 248 bulk tanks owned. From these bulk tanks local dealers and consumers are served by tank wagons owned and operated by the Champlin. The Champlin operates approximately 316 retail filling stations in the territory served by the pipe line.

7. In disposing of its petroleum products at its three terminals in Kansas, Nebraska, and Iowa, respectively, the Champlin uses two types of sales; one is known as the spot-market or date of shipment sale, the other known as a contract sale, is based on yearly contracts with its customers. In spot sales the price of the product is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices at Enid as shown in the issue of the Thursday preceding date of sale. These prices are made effective at 7:00 a. m. Friday morning and remain in force until the next succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The price of the product at the pipe line terminal used includes, in addition to the spot or f. o. b. price at the [fol. 244] Enid refinery, an additional sum called a differential. Said differential is computed by subtracting from the through railroad freight rate from Enid to final destination (usually the purchaser's point of business) the railroad freight rate from the pipe line terminal to final destination. The differential represents the charge assessed and collected by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe line terminal. Competitive conditions sometimes compel departures from the prices arrived at in accordance with the formula above described, and have the effect of reducing the sale price. Contract sales are likewise made upon the basis of Enid refinery price plus differential.

8. The Champlin is the sole owner of the products transported through its pipe line; it has never transported any

products belonging to any other company; its pipe line does not connect with any other pipe line but only with storage tanks at the three terminal points; there are no facilities for putting any petroleum product into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the Champlin's storage tanks by means of truck racks or railroad tank car racks and is not made directly from the pipe line in any instance; no tariffs stating transportation changes have been filed with the Interstate Commerce Commission or with any state commission or regulatory body.

9. The Champlin is a fully integrated pipe line company owning and operating, either directly or through its subsidiary the Cimarron, every facility necessary for the production and the transportation of crude oil by a gathering pipe line, the refining of such crude oil, the transportation by pipe line of the products of its refinery, and the distribution by pipe line of the products through jobbers, or directly, to the consuming public.

10. On August 21, 1941, the Champlin filed with the Interstate Commerce Commission a petition alleging that it [fol. 245] is not a common carrier subject to the provisions of the Interstate Commerce Act and praying that the Commission so determine its status. It prayed further that it be relieved of the requirement of filing the valuation reports prescribed by the Commission under the provisions of Section 19a of the Act, which reports had previously been demanded of the Champlin by the Commission's Bureau of Valuation.

The Commission by its Division 2 designated the proceeding initiated by said petition as Valuation Docket No. 1267 and assigned the same for hearing before a Commission examiner. When the matter came on for hearing on November 13, 1941, the Champlin filed an amended petition of the same general purport as that previously filed.

A large volume of evidence both oral and documentary was received at the hearing, and the matter was submitted to Division 2 of the Commission for determination; on December 14, 1942, said division made its report which is set out in the printed pamphlet filed by the plaintiff entitled "Exhibits to Petition," and is officially reported in volume 49 I. C. C. Valuation Reports, beginning on page 463. In said report it was found that the Champlin is engaged in

the interstate transportation of refined petroleum products by pipe line, that it is engaged in interstate commerce and is a common carrier subject to the Interstate Commerce Act. The division concluded that no order was required at that time.

Upon petition of the Champlin the Commission reopened the proceeding for reargument before the entire Commission, and the entire Commission on June 12, 1944, made its Report on Reargument in which the findings made by Division 2 in the prior report were affirmed; and the Commission ordered the Champlin to comply with the provisions of Valuation Orders Nos. 26 and 27. Said report of the entire Commission is on reargument, is correctly set out in [fol. 246] plaintiff's "Exhibits to Petition" above referred to, and is officially reported in Volume 49 of I. C. C. Valuation Reports at page 549.

11. The findings and statements of fact made in the two reports of the Commission above referred to are supported by substantial evidence of record, submitted to the Commission in said proceeding, and are adopted by this Court; they are sufficient to support the Commission's conclusions as stated in the reports above referred to that the Champlin is a pipe line company and is a common carrier of petroleum products by pipe line in interstate commerce and is subject to the Interstate Commerce Act, and its order that the Champlin make valuation returns as required by the Commission.

Conclusions of Law

The Court states the following conclusions of law:

1. That the Champlin Refining Company is a pipe line company and is a common carrier of petroleum products by pipe line in interstate commerce, and is subject to the provisions of the Interstate Commerce Act applicable to such common carriers, including, in particular, Section 19a of said Act.

2. That the Interstate Commerce Commission had jurisdiction to enter the order complained of.

3. That the order which the plaintiff here seeks to set aside is a lawful and valid order of the Interstate Commerce Commission.

4. That the findings made in the two reports of the Commission above referred to are sufficient to support the Commission's order and that the evidence received by the Commission is sufficient to support said reports and order.

5. That the Interstate Commerce Act as construed by the Commission in said reports and order is not violative of any provision of the Constitution of the United States and [fol. 247] that the Commission's order deprives the plaintiff of no constitutional right.

6. That the bill of complaint herein is without merit and should be dismissed at the cost of the plaintiff.

This — day of April, 1945.

—— ——, United States Circuit Judge. —— ——, United States District Judge. —— ——, United States District Judge.

[File endorsement omitted.]

[fol. 248] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 249] BEFORE THE INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Re: Valuation of Pipe Line of Champlin Refining Company

AMENDED PETITION

Comes now your petitioner, Champlin Refining Company and respectfully shows:

I. Your petitioner is a corporation, organized and existing under the laws of New Mexico, with its principal office at Enid, Oklahoma, and its business is the producing and refining of petroleum, and marketing the products thereof.

II. Your petitioner has constructed a private pipe line for the distribution of gasoline and other refined petroleum products, from its storage plant located at its refinery at Enid, Oklahoma, to its storage facilities at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa.

This line was built as a plant facility exclusively for the distribution of refined petroleum products owned and manufactured by petitioner at its Enid refinery, and has never been used to move any petroleum products owned by (or purchased from) any other person, firm or corporation.

This line has been in partial operation to Hutchinson, Kansas, since July, 1935, to Superior, Nebraska, since September, 1935, and in full operation since completion of the line into Rock Rapids, Iowa, on or about May, 1940, and its status as a private carrier has never been questioned prior to the commencement of this proceeding.

[fol. 250] III. On or about May 15, 1941, the Directo of Valuation of this Commission notified your petitioner that it was required to prepare and file with the Commission, on or before September 1, 1941, a complete inventory of the above described pipe line property, showing the quantities, units, classes, kinds and condition thereof.

In compliance with said request the Champlin Refining Company did on July 17, 1941, tender to said Director of Valuation of said Commission, a full, true, and correct report of all data which said company possesses with regard to said private pipe line, fully supported by maps and detail drawings of construction, which report was rejected and

returned by the Commission to the Champlin Refining Company for the reason as the petitioner verily believes that the same was not made upon a form in use by carriers admitting themselves to be common carriers.

A copy of said report as so tendered to said Commission on July 17, 1941, marked Exhibit X for identification, is by such reference made a part of this amended petition.

A copy of the letter of rejection of such tendered report is hereto attached, marked Exhibit XII, and by such reference made a part hereof.

IV. Your petitioner asserts:

(1) That the Champlin Refining Company is not a common carrier.

(2) That this Commission is without jurisdiction to proceed herein.

(3) That the Champlin Refining Company is not a pipe line company.

(4) That the use to which the pipe line in question is subjected by the Champlin Refining Company is not impressed with a public interest.

(5) That the pipe line in question is a private pipe line only.

(6) That the use to which the pipe line in question is subjected by the Champlin Refining Company does not involve any practice detrimental to interstate commerce.

[fol. 251] (7) That in refusing to receive the data submitted by the Champlin Refining Company in such report dated July 17, 1941, and tendered as hereinbefore set forth, the said Commission seeks to require the Champlin Refining Company to condemn itself by admitting a legal status which does not exist, thereby depriving the Champlin Refining Company of its constitutional guaranty of due process of law, while further depriving it of its constitutional guaranty of property rights in seeking to require the said Champlin Refining Company to incur large items of expense to procure for said Commission information which the Champlin Refining Company admittedly does not have in its books, records, or otherwise in possession.

(8) That the pipe line in question is a plant facility only and is but an extension of the plant "loading rack."

(9) That the report required of the Champlin Refining Company by said Commission is not intended for the advice of Congress in matters of legislation but is solely intended for the use of the Commission in fixing rates for transportation as a common carrier.

(10) That if such information is needed by Congress it has the power to require the attendance of the representatives of the Champlin Refining Company for the giving of the same, which proceeding would not involve "rate fixing" for the Champlin Refining Company.

(11) That the report required of the Champlin Refining Company is not required of said Company by or as a matter of law.

(12) That the report required of the Champlin Refining Company cannot be required of it unless it is a common carrier, which it specifically denies.

(13) That the order complained of is arbitrary, capricious, invalid, and in excess of the powers conferred upon the Commission by law.

(14) That the Commission is without authority in the law to value a plant facility or private pipe line.

(15) That the Champlin Refining Company is not a common carrier subject to the provisions of the Interstate Commerce Act.

(16) That the Champlin Refining Company is not engaged in transportation as the term is used in the Interstate Commerce Act.

[fol. 252] (17) That the aforesaid valuation order is an undue and unnecessary burden upon petitioner and will constitute a drain upon the resources of the government and the company which will serve no useful purpose.

(18) That the state of the art at the time of the passage of the pipe line Act as well as at the time of the adoption of the Hepburn amendment did not include the transportation of gasoline through a welded, seam-

less steel pipe line in distribution of such refined product, so that Congress could not have had such pipe line as is in question here in contemplation in the passage of such legislation.

Wherefore your petitioner prays that:

(a) This Commission revoke, rescind, and dismiss the orders of Ernest I. Lewis, Director, dated May 15, 1941;

and further prays that:

(b) The Commission proceed to determine

(1) That petitioner is not a common carrier,

(2) That petitioner operates a private pipe line,

(3) That petitioner is not a pipe line company, and

(4) That petitioner is not engaged in transportation within the meaning of the Interstate Commerce Act;

and finally prays that:

(c) Petitioner be relieved of the requirement of filing valuation reports as directed by the orders of May 15, 1941, and

(d) That a final order be entered adjudging that petitioner be relieved of filing any report or reports for valuation or rate making purposes.

Dated at Washington, D. C., this 11th day of November, 1941.

Champlin Refining Company, Enid, Oklahoma. By Harry O. Glasser, Nathan Scarritt, Samuel H. Horne, E. S. Champlin, Its Attorneys.

805 Broadway Tower, Enid, Oklahoma. 1150 Munsey Building, Washington, D. C.

[fol. 253] *Duly sworn to by L. A. Snyder; jurat omitted in printing.*

[fol. 254] Clerk's Note: Exhibit "X" is omitted at this point for the reason that it is impracticable to photostat

and said exhibit in its original form is being forwarded under a separate certificate.

[fols. 255-256] EXHIBIT XII TO AMENDED PETITION

Interstate Commerce Commission
Bureau of Valuation
Washington

July 22, 1941

Office of the Director.

Subject: Champlin Refining Company Valuation Orders Nos. 26 and 27

Mr. Geo. E. Leverton, General Auditor, Champlin Refining Company, Enid, Oklahoma.

DEAR SIR:

Under date of July 18, 1941, you forwarded to this office the original copy of a report which you stated you had prepared in compliance with our letters of May 15, 1941, with which were enclosed copies of Valuation Orders Nos. 26 and 27, together with instructions and sample notes pertaining to the orders.

While the report which you have submitted is informative, it can in no sense be construed as a compliance with the valuation orders which have been served. We are, therefore, returning the report herewith, together with additional copies of Valuation Orders Nos. 26 and 27.

You will recall that you attended a conference in my office on December 4, 1939, where these matters were informally discussed. It was my thought that as a result of our discussion at that time and in view of the detail nature of the instructions accompanying Valuation Orders Nos. 26 and 27, there would be no misunderstanding as to the requirements of these orders. However, that is apparently not the case and I now believe that to obviate any further delay or misunderstanding in regard to these matters, it is desirable for you to have your representative, who will be in responsible charge of the preparation of the data, arrange to spend a day in our offices where he

can familiarize himself with the various requirements through first-hand contact with our Engineering, Accounting, and Land Sections.

We should appreciate being advised as to the earliest date such a conference can be arranged.

Yours very truly, (Signed) Ernest I. Lewis, Director.

Enclosures.

[fols. 257-259] Before the Interstate Commerce Commission

Valuation Docket No. 1267

Valuation of Pipe Line of Champlin Refining Company

Hearing Room "D," Interstate Commerce Commission Building, Washington, D. C., November 12, 1941

Met, pursuant to notice, at 10 o'clock a.m. Before J. Paul Kelley, Examiner.

Appearances:

Harry O. Glasser, 805 Broadway Tower, Enid, Oklahoma, appearing for Champlin Refining Company.

Samuel H. Horne, 1150 Munsey Building, Washington, D. C., appearing for Champlin Refining Company.

Nelson Thomas, 3328 Interstate Commerce Commission Building, Washington, D. C., appearing for the Bureau of Valuation.

[fol. 260] Proceedings

Exam. Kelley: The Interstate Commerce Commission has assigned for hearing at this time and place Valuation Docket No. 1267, Valuation of the Pipe Line of Champlin Refining Company.

This hearing is on petition of the Champlin Refining Company, and the issue is the common carrier status of this pipe line for valuation purposes.

Who appears for the petitioner?

Mr. Glasser: Harry O. Glasser of Enid, Oklahoma, and Mr. Samuel H. Horne of Washington.

Exam. Kelley: What is your name?

Mr. Glasser: Harry O. Glasser, G-l-a-s-s-e-r.

Exam. Kelley: Who appears for the Commission?

Mr. Thomas: Nelson Thomas, 3328 Interstate Commerce Commission Building, for the Bureau of Valuation.

Exam. Kelley: Are there any other appearances? If not petitioner may proceed.

Mr. Glasser: We first desire to be permitted to file an amended petition which does not in anywise change the issues but merely amplifies the three basic provisions that were put in the original petition, and we have 30 copies which we will present, and we have additional copies prepared which we can furnish counsel if they need additional copies.

Exam. Kelley: This amended petition will be received.

[fol. 261] Mr. Thomas: Mr. Examiner, I will state now that I haven't had a chance to examine this carefully, but a casual inspection makes me believe that it is possible that the Bureau of Valuation might want to answer some of the allegations. I don't mean in a formal way, but by evidence and—so that I state now that it may mean—the filing of this may mean that the Bureau of Valuation will want an adjourned hearing on this in order to take care of certain allegations that I have seen in this petition. That is a matter, however, that I should like to leave for further consideration.

Exam. Kelley: I will leave that for future consideration. It is received on the assurance of counsel that the issues are not broadened.

Mr. Glasser: Well, there will be no objection on our part if counsel think they will need an adjourned hearing.

Exam. Kelley: You have a witness?

Mr. Glasser: Well, we have a number of witnesses, and I think we might just as well proceed with their testimony. Counsel have agreed upon a stipulation which covers the testimony of the witnesses G. E. Leverton, E. G. Wilmoth, Ray Collier, George F. Brigance, and L. A. Snyder on direct examination, reserving to counsel for the Valuation Section the right to cross-examine Mr. Snyder on all of the matters that he has testified to in direct examination.

Exam. Kelley: Is Mr. Snyder present?

[fol. 262] Mr. Glasser: He is the gentleman that is over in the Department of Justice. Now, we have reduced the testimony of these witnesses to writing. We have propounded questions to them and they in turn have prepared their answers, and we have furnished counsel with copies—

a copy of each, and the stipulation covers the reading of these questions and answers of each of these witnesses.

Exam. Kelley: Have you a copy of the stipulation for the record?

Mr. Glasser: Yes. We have the original signed—now, the other one—do you have the other original signed stipulation also?

Mr. Thomas: Yes.

Mr. Glasser: There are two of them.

Mr. Thomas: There is the second stipulation; I may state that that second stipulation merely covers some supplemental questions and answers with respect to the testimony of Witness Snyder.

Exam. Kelley: You have the witness here?

Mr. Glasser: The testimony has been sworn to and stipulated. We may read it as though it were a deposition.

Exam. Kelley: Oh, well. Have you copies——

Mr. Glasser: Yes, I have copies of each witness.

Mr. Thomas: Which one will we take first?

Mr. Glasser: Wilmoth first, I believe. Well, we better [fol. 263] take them in the order of the stipulation.

Mr. Thomas: That is Leverton then.

Mr. Glasser: Well, I think it will be better to take the pipe line first. Yes, we will take Leverton's first.

Now, we have ten copies—I will furnish you, Mr. Reporter, with one. It is a complete copy and sworn to. We have nine additional copies here which are available here for the use of the——

It will not be necessary for me to be sworn to read this, I take it?

Mr. Thomas: We will waive it.

Exam. Kelley: No. No.

Mr. Glasser: Direct examination of the witness G. E. Leverton:

"Direct examination:

"1 Q. (By Harry O. Glasser) State your name.

"A. G. E. Leverton.

"2 Q. Where do you reside?

"A. 1619 West Broadway, Enid, Oklahoma.

"3 Q. What is your profession?

"A. An Accountant.

"4 Q. Are you employed in such professional capacity?

"A. I am.

"5 Q. By whom?

"A. Champlin Refining Company, Enid, Oklahoma.

[fol. 264] "6 Q. For what period of time have you been so employed?

"A. Since 1923.

"7 Q. What are your duties in such position?

"A. I have charge of the general accounting and corporation records and direct the accounting system in use. I also have supervisory control over those employed in the accounting division of the Champlin Refining Company.

"8 Q. Do you have in your custody and supervision the books, records, documents and original papers of the Champlin Refining Company?

"A. I have.

"9 Q. And more particularly with reference to the construction and operation of the company products pipe line extending from Enid, Oklahoma, to Rock Rapids, Iowa?

"A. Yes, sir.

"10 Q. How is a products line distinguished from a crude oil pipe line?

"A. A crude oil pipe line is a pipe line used in gathering and transporting crude oil for manufacture in an oil refinery.

"A products pipe line is a pipe line used to transport manufactured products from the manufacturing refinery to a point other than at the refinery, or storage, sale, or further transportation.

"11 Q. Does the Champlin Refining Company operate [fol. 265] any crude oil pipe line at any point or points?

"A. No.

"12 Q. Does the Champlin Refining Company own a subsidiary company engaged in gathering and transporting crude oil?

"A. Yes, the Cimarron Valley Pipe Line.

"13 Q. Where does it operate?

"A. In Oklahoma only.

"14 Q. Is it a common carrier in Oklahoma?

"A. It is.

"15 Q. Does the Cimarron Valley Pipe Line Company have any connection, either physically or in a business sense, in the operation by the Champlin Refining Company of the products pipe line from Enid, Oklahoma, to Rock Rapids, Iowa?

"A. No, it does not.

"16 Q. Has it ever had either such connection since such products pipe line was put into use?

"A. No.

"17 Q. Does the Champlin Refining Company own a products pipe line?

"A. Yes.

"18 Q. Between what points was such pipe line constructed?

"A. From Enid, Oklahoma extending north thorugh Hutchinson, Kansas, and Superior, Nebraska, to Rock Rapids, Iowa.

"19 Q. Does the operation of the Champlin products pipe line differ in any respect from the definition of such [fol. 266] operation generally in the industry as given by you in response to Question 10?

"A. It does not.

"20 Q. Are you familiar with the operative history of the Champlin Refining Company?

"A. I am.

"21 Q. Will you briefly detail that history?"

Now, at this point the witness had prepared an exhibit which was tendered to the Commission in which this history of the company was recited. We would like to have the exhibit marked as X for identification.

Exam. Kelley: Mary it No. 1.

Mr. Glasser: Well, all through the record it has been referred to as Exhibit X. It will be very confusing unless we retain that identification.

Exam. Kelley: Very well.

(Exhibit No. X, Witness Leverton, marked for identification and received in evidence.)

Mr. Glasser: It is merely a matter of convenience, inasmuch as it is so referred to by counsel on both sides. We desire to offer this exhibit in evidence for the recitation which is quoted by the witness, which will be found in the fore part of the exhibit, and the answer is as follows:

"A. (A) Incorporation——

Mr. Thomas: Just a second. Do you have a copy of that [fol. 267] exhibit for the Commission?

Mr. Glasser: Yes, we have. We gave you folks a copy.

Mr. Thomas: Well, I think that is the one we had; isn't it?

Exam. Kelley: Off the record.

(Discussion off the record.)

Mr. Glasser: Reading from the witness' answer further:

"A. (A) Incorporation—The Champlin Refining Company was incorporated under the general laws of New Mexico on July 20, 1929, at which time it acquired through reorganization, the properties of a corporation (of the same name) that had been incorporated under the laws of the State of Maine on April 17, 1920.

"(B) Capital—The corporation is authorized to issue 250,000 shares of common stock without par or nominal value and 2,000 shares of 6 per cent preferred stock of the par value of $100.00 per share.

"(C) Outstanding Stock—One hundred fifty-six thousand, nine hundred thirty-seven (156,937) shares of the no par common stock are issued and outstanding, all being owned by H. H. Champlin and members of his family. No preferred stock is outstanding.

"(D) Business—The Company is (and the predecessor corporation was) engaged in the business of producing and refining crude oil and natural gas, and marketing the [fol. 268] products thereof, and engages in such other activities as are in furtherance of that business.

"(E) Properties—The company owns (1) approximately 149 oil wells on 53 leases in Oklahoma, 45 wells on 13 leases in Kansas, and 52 wells on 10 leases in Texas; (2) approximately 75,000 acres of undeveloped leases situated in Oklahoma, Kansas, Texas, New Mexico, Alabama and Illinois; (3) an oil refinery at Enid, Oklahoma which processes approximately four and a half million barrels of crude oil annually producing a complete line of refined oil products; (4) all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of gathering lines used principally to transport the crude produced or purchased by the company from oil leases in Oklahoma to the Enid refinery; (5) seven hundred twenty three (723) tank cars used to transport the products of the refinery to company bulk plants or to jobbers located in Oklahoma, Kansas, Colorado, Wyoming, North and South Dakota, Nebraska, Minnesota, Wisconsin,

Iowa, Illinois, Missouri, Texas, and other states; (6) approximately 316 filling stations and 248 gasoline and oil bulk plants; (7) the products pipe line which is the subject of this report; (8) 5 motor trucks used to transport products from storage at Rock Rapids, Iowa to points in that and other states, 3 trucks used to transport lubricating oil from the Enid, Oklahoma, refinery to the warehouses at the Hutchinson, Kansas, Superior, Nebraska, and Rock [fol. 269] Rapids, Iowa, pipe line terminals, as well as Lincoln and Grand Island in Nebraska; and Denver in Colorado and various points in Kansas, 18 trucks used in the operation of the products pipe line and the operation and development of oil leases in Oklahoma, Kansas and Texas, most of which occasionally transport materials for construction, operation and maintenance from one state to another; and, (9) various other equipment used to promote the producing, purchasing and refining of crude oil and the marketing of the products thereof.

"(2) The Gasoline Pipe Line System consists of (1) 258 miles of graded 6-inch pipe weighing 14½ pounds per foot extending from Enid to Superior, Nebraska, plus 200⅔ miles of welded 6-inch pipe weighing 14.96 pounds per foot extending from Superior, Nebraska, to Champlin, near Rock Rapids, Iowa;——"

I might explain that Champlin is the railroad station.

"—(2) pumping station at Enid, Oklahoma; (3) terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kansas; Superior, Nebraska, and Champlin (near Rock Rapids) Iowa; (4) No. 8 B. & S. copper wire graded telephone line (35 yellow pine 8-*pound* creosoted 20′ poles, 5 inches at top, per miles) also equipped with teletype sending and receiving equipment at Enid and the 3 terminals; (5) booster or repumping equipment (I) near Bluff City, Kansas (II) Hutchinson, Kansas, (III) Tescott, Kansas, (IV) Superior, Nebraska and (V) Clarkson, Nebraska; (6) rail connections [fol. 270] at the terminals are: (I) Hutchinson, Kansas; Hutchinson and Northerly Railway Company, Santa Fe, Rock Island, Missouri Pacific and Arkansas Valley; (II) Superior, Nebraska; Santa Fe, Missouri Pacific, Chicago and Northwestern and the Chicago Burlington and Quincy; (III) Champlin, Iowa; Rock Island with connection with the Illinois Central at Rock Rapids a distance of approximately 3 miles.

"(A) Construction of the 256 miles from Enid through Hutchinson, Kansas, to Superior, Nebraska, and the terminal facilities at those points was completed in June, 1935. Booster equipment near Bluff City was installed in 1939 and near Tescott, Kansas, in 1940. The 260⅔ miles of line from Superior, Nebraska, to Champlin, Iowa, the terminal facilities at the last named point, and the booster station near Clarkson, Nebraska, were completed in May, 1940.

"22 Q. Are you advised as to the total cost of the products pipe line storage facilities terminals, repair houses and telephone line used in connection with the operation of such products line facilities?

"A. I am.

"23 Q. Will you state such total figure?

"A. As of December 31, 1940, the total cost was $3,198,028.66.

"24 Q. Please refer to your records and state the amount of each investment subdivision of such products pipe line facility as the same is carried upon the books of the company."

[fol. 271] Exam. Kelley: Just a moment. Mr. Thomas, you have been over all of this? This is off the record, please.

(Discussion off the record.)

Mr. Glasser: (Continuing)—

"A.

Land	$ 11,683.50
Right-of-way	107,913.63
Line pipe	1,590,322.86
Line pipe fittings	84,302.80
Pipe line construction	708,163.02
Buildings	39,546.71
Pumping equipment	62,452.98
Machine tools and machinery	1,500.16
Other station equipment	4,375.89
Oil tanks	306,774.85
Delivery facilities	23,580.79
Communication system	247,463.42
Office furniture and equipment	3,826.90
Vehicles and other work equipment	2,776.14
Other property	3,345.01
Total	$3,198,028.66

"25 Q. Did you on or about July 18, 1941 submit to the Valuation Section of the Interstate Commerce Commission the detail of the investment which you have just indicated?

"A. I did.

"26 Q. I now hand you an exhibit which I will ask the [fol. 272] Reporter to mark for identification as "X", and ask you to state if that is the report which you so tendered to the Interstate Commerce Commission?

"A. It is."

And that is that identical document I offered in evidence. And I have already offered it, and so I won't do so again.

"27 Q. Mr. Leverton, will you please identify the information contained in such exhibit in detail in order that your answer may acquaint the Examiner with the contents of such report?

"A. The report is captioned 'Champlin Refining Company, Private Pipe Line, December 31, 1940.' The first four pages consist of a letter in affidavit form signed by H. H. Champlin, president of the Champlin Refining Company, which contains a history of the corporation, including information as to its incorporation, outstanding capital stock, business, and properties.

"The next four pages consist of a detailed analysis of the investment in the products pipe line, totaling $3,198,028.66.

"The balance of the report consists of 41 maps and drawings showing the location and detail of the pipe line, tanks, buildings and other facilities which in its entirety constitutes a complete*ly* copy of all such maps and detail which the Company had prepared for its own use in construction and operation of said products line.

"28 Q. What did the director of valuation for the Com- [fol. 273] mission do with the report so tendered by the Champlin Refining Company?

"A. He promptly returned it by U. S. Mail, together with a letter explaining his action.

"29 Q. Do you have that letter?

"A. I do.

"30 Q. Will you produce it, please?"

Now, we have to have that letter.

(Discussion off the record.)

Mr. Glasser: There has been a copy of the letter attached marked Exhibit XII, attached to the amended petition, so

that for convenience—here is a photo copy of the original letter to which the witness refers, and if the Reporter will identify it as Exhibit XII to conform with these other questions we will offer the photo copy in evidence.

Exam. Kelley: What number is that, sir?

Mr. Glasser: Exhibit XII.

Mr. Thomas: Now, you start with Exhibit X and then——

Mr. Glasser: Well, we had to do that because you know this other evidence covers a lot of numbers up to that, and we couldn't use the first letter or number one because we have already utilized them before this matter was considered.

I will offer in evidence photocopy of the letter referred to.

Exam. Kelley: It will be received.

Mr. Glasser: Copy of which is attached to the amended [fol. 274] petition.

(Exhibit No. XII, Witness Leverton, marked for Identification and Received in Evidence.)

Mr. Glasser: (Continuing)—

"21 Q. Are you familiar with the method by which the Federal Government taxes the transportation facility of such products pipe line?

"A. I am."

Mr. Thomas: Well, we object to that on the ground it is irrelevant and immaterial. The Federal Government's taxation is under one statute, whereas a valuation by the Commission is provided for in still another statute, so that there is no necessary connection between the two.

Mr. Glasser: The necessary connection, if the Examiner please, is that the Government taxes the transportation facility, and the Federal statute which we cite and quote provides a method by which a tax is determined, notwithstanding the transportation charges not made in the hauling of the product, which is very material on this question of whether the carrier is a common carrier.

Exam. Kelley: We will receive the evidence over the objection.

Mr. Glasser: (Continuing)—

"32. Q. Are you advised as to the Statute under which such tax is computed or determined?

[fol. 275] "A. I am.

"33 Q. Please cite the Statute.

"A. Sections 3460 and 3461 Internal Revenue Code (as amended by 1 of the 1939 Act; 209 of the 1940 Act and 521 of the 1941 Act) which Statutes read as follows:

"(a) Computation and Payment.—There shall be imposed upon all transportation of crude petroleum and liquid products thereof by pipe line originating before July 1, 1945—

"(1) A tax equivalent to 4½ per centum of the amount paid for such transportation, to be paid by the person furnishing such transportation.

"(2) In case no charge for transportation is made, either by reason of ownership of the commodity transported or for any other reason, a tax equivalent to 4½ per centum of the fair charge for such transportation, to be paid by the person furnishing such transportation.

"(3) If (other than in the case of an arm's length transaction) the payment for transportation is less than the fair charge therefor, a tax equivalent to 4½ per centum of such fair charge, to be paid by the person furnishing such transportation.

"(b) Fair Charge Defined.—For the purposes of this section, the fair charge for transportation shall be computed—

"(1) from actual bona fide rates or tariffs, or

"(2) if no such rates or tariffs exist, then on the basis [fol. 276] of the actual bona fide rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or

"(3) if no such rates or tariffs exist, then on the basis of a reasonable charge for such transportation, as determined by the Commissioner.

"Section 3461. Returns.

"Every person liable for the tax imposed under Section 3460 shall make monthly returns under oath in duplicate and pay such taxes to the collector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

"34. Q. And now give in detail the method employed by which the Champlin Refining Company is taxed by the Federal Government within the provisions of such statute

for transportation charge upon the product carried through such products pipe line."

Mr. Thomas: We object to that for the same reasons above stated.

Exam. Kelley: Objection is overruled.

Mr. Glasser: (Continuing)—

"A. In interpreting such provisions in their application to the products pipe line of the Champlin Refining Com- [fol. 277] pany, the Commissioner of Internal Revenue has found that no charge for transportation is made or fixed by the Champlin Refining Company which could be used as the basis for taxation. He, therefore, computes 'fair charges' of 20 cents per barrel for products moving from Enid, Oklahoma, to Hutchinson, Kansas, and 35 cents per barrel for products moving from Enid, Oklahoma, to Superior, Nebraska, under the authority of subdivision (b) of Section 3460. The Commissioner has not yet fixed the basis for computation of tax on products moving to Rock Rapids, Iowa.

"35. Q. Does the Champlin Refining Company——"

Mr. Thomas: Mr. Examiner, I have the further objection to that that that ruling by the Commission must have been in the form of some formal ruling in writing and that the best evidence of that would be a copy of that ruling. If it is available, I think it should be furnished.

Exam. Kelley: Do you have that?

Mr. Glasser: Well, we would have it in the Bureau of Internal Revenue in the matter of conference and adjustment of taxes. It is all done by assessment, and we pay the tax, and this is the basis upon which we pay the tax. There is no formal proceeding.

Exam. Kelley: However——

Mr. Glasser: We will furnish the record with a duplicate of the assessment sheet for the various years, if you desire us to do so. But we have been taxed on that basis under [fol. 278] the provisions of 3460, which gives the Commissioner the right to determine what a fair valuation would be.

Mr. Thomas: Isn't there some regulation though?

Mr. Glasser: Oh, yes. The Commissioner has promulgated regulations for the guidance of taxpayers where in situations such as here there is no charge actually made.

Then it becomes his determination of what would be a fair charge, and the tax is computed accordingly.

Mr. Thomas: Can you give us a reference to that regulation?

Mr. Glasser: Well, I would have to refer to the record. See, I haven't had anything personally to do with this. I couldn't state. I would have to refer to the record and furnish you with a photostatic copy of whatever we have in connection with it.

Mr. Thomas: I don't think a photostatic copy would be necessary, but if there has been a regulation or ruling under which this specific application is made, why, just give us a reference to it at some convenient time after the hearing closes.

Mr. Glasser: We will make an investigation and furnish photo copies of whatever records we have on it.

Mr. Thomas: Yes, sir.

Mr. Glasser: (Continuing)—

"35. Q. Does the Champlin Refining Company own and operate railroad tank cars?

[fol. 279] "A. It does.

"36. Q. How many such railroad tank cars are so owned by such company?

"A. 723.

"37. Q. What was the original cost of such railroad tank cars?

"A. $1,401,907.73.

"38. Q. How are such railroad tank cars employed?

"A. They are loaned to the railroads upon a mileage basis.

"39. Q. Has such use ever been designated as a common carrier use?

"A. It has not."

Mr. Thomas: Objected to as immaterial and irrelevant.

Exam. Kelley: Objection is noted on the record.

Mr. Glasser: (Continuing)—

"40. Q. Have any reports required of common carriers ever been required of the Champlin Refining Company in such use of such tank cars, by any agency of the Federal Government?

"A. No, sir."

Mr. Thomas: Same objection.

Exam. Kelley: Go ahead.

Mr. Glasser: (Continuing)—

"41. Q. Does the Champlin Refining Company own any trucks used in hauling lubricating oils from the Enid Refinery to terminals and storage plants in other states?

"A. It does, as I have explained in the 8th subdivision [fol. 280] of my answer to Question 21.

"42. Q. How are such trucks used in such service?

"A. My answer to Question 21 will apply to this question.

"43. Q. How many such trucks are owned by the Company?

"A. My answer to Question 21 will also apply to this question.

"44. Q. What was the total original investment in such trucks?

"A. $10,729.69.

"45. Q. Has the use to which such trucks have been subjected ever been designated as a common carrier use?

"A. It has not."

Mr. Thomas: Objected to as irrelevant and immaterial.

Exam. Kelley: Objection noted.

Mr. Thomas: Not involved in this case. We are concerned only with the pipe line.

Mr. Glasser: (Continuing)—

"46. Q. Have any reports required of common carriers (only) by truck ever been required of the Champlin Refining Company in such use of such trucks by any agency of the Federal Government?

"A. No."

Mr. Thomas: Objected to for the same reason.

Exam. Kelley: Proceed.

Mr. Glasser: (Continuing)—

"47. Q. Is there any difference in principle in the opera- [fol. 281] tion by the Champlin Refining Company in delivering its products in outside states by (a) trucks on the public highways, and (b) its products pipe line from Enid, Oklahoma to Rock Rapids, Iowa?"

Mr. Thomas: Objected to as calling for a legal conclusion.

Exam. Kelley: That objection can be sustained. Proceed with the reading.

Mr. Glasser: (Continuing)—

"48 Q. Did you have personal knowledge of the planning and early construction of the products pipe line in question?

"A. I did.

"49 Q. To what extent did you have information with regard hereto?

"A. All information that was available to any of the Executive officers of the company.

"50 Q. When did you first learn of the proposal to make the Cimarron Valley Pipe Line Company a common carrier in the operation of the products pipe line then in course of construction?

"A. About April 15, 1935, when my attention was directed to correspondence concerning four condemnation suits which has been filed against seven persons in four counties in the State of Kansas.

"51 Q. What did you do with regard to such proposal?

"A. I immediately directed Mr. Champlin's attention [fol. 282] to the complications that would arise in the operation of a products line, as a common carrier and recommended settlement at once with all persons involved in such litigation and the dismissal of such cases.

"52 Q. Now, please state what further steps were taken to avoid such responsibility?

"A. The condemnation suits that had been instituted were dismissed and satisfactory settlements were made with such land owners.

"Assignments of the rights-of-way from the Cimarron Pipe Line Company to Champlin Refining Company, conveying the entire right-of-way of such line were executed on June 10, 1935, and immediately recorded in the county seats of all counties in which such rights-of-way were granted.

"A bill of sale was at the same time executed by Cimarron Valley Pipe Line Company conveying all of its right, title and interest in and to said pipe line and its facilities to Champlin Refining Company, which was recorded in the office of the County Clerk of Garfield County, Oklahoma.

"The Champlin Refining Company, having advanced all funds necessary for the purchase of equipment and construction of the pipe line and its facilities, thereupon cancelled its charges against Cimarron Valley Pipe Line Company. The Champlin Refining Company took over the completion of the pipe line system and operated it from the first day of its use, When the licenses that had [fol. 283] been granted to Cimarron Valley Pipe Line Company in Kansas and in Nebraska expired in 1936, that corporation withdrew from both states."

Mr. Thomas: Mr. Examiner, may I inquire of counsel, calling his attention to the fact that there are certain photostates——

Mr. Glasser: Yes.

Mr. Thomas: ——evidencing those——

Mr. Glasser: All those——

Mr. Thomas: ——proceedings there?

Mr. Glasser: Yes. Yes.

Mr. Thomas: Well, will they be offered later?

Mr. Glasser: Well, they are here on the table, Mr. Thomas, I would like to have you offer them in evidence. You requested them by letter. I don't think they are material in the case, but we brought them here because you requested them.

Mr. Thomas: Of course, we will have to call Mr. Lever- here to identify them as the papers to which he is re-ring. There will be no objection there?

Mr. Glasser: No. They are self-explanatory. They are photostatic copies of the originals certified by the officers.

Mr. Thomas: Not necessarily. We may call him when you get through with him so as we may put in those papers.

Mr. Glasser: Well, I understood in my conference with you that there would be no objection raised to the identi- [fol. 284] fication of any of these documents. I furnished you with photostatic copies of all of them.

Mr. Thomas: It is not a matter of identification, but a matter of proper explanation of some of them.

Mr. Glasser: Well, ——

Mr. Thomas: I just wish to inquire as to whether or not they would be brought in in connection with this testimony.

Exam. Kelley: Off the record.

(Discussion off the record.)

Mr. Glasser: The next witness will be Roy G. Collier, and I have ten copies of Mr. Collier's testimony also. I will leave seven copies, which I think is a sufficient number.

The Witness Roy G. Collier:

"Direct examination.

By Harry O. Glasser:

"1 Q. State your name.

"A. Roy G. Collier.

"2 Q. Where do you reside?

"A. 412 West Pine Street, Enid, Oklahoma.

"3 Q. What is your business?

"A. Civil Engineer.

"4 Q. By whom are you employed?

"A. Champlin Refining Company, Enid, Oklahoma.

"5 Q. For how long have you been so employed?

"A. Approximately thirteen years.

"6 Q. What are your educational qualifications?

[fol. 285] "A. Bachelor of Science Degree in civil engineering.

"7 Q. In what school?

"A. A. & M. College at Stillwater, Oklahoma.

"8 Q. Has your employment by the Champlin Refining Company been incidental to your educational training?

"A. Yes.

"9 Q. In what capacity have you been employed by the Champlin Refining Company?

"A. As civil engineer in the pipe line department.

"10 Q. Specifically, what have been your duties in such pipe line department of the Champlin Refining Company?

"A. I have been required to prepare certain of the records of the company upon which are shown details of the construction of pipe lines, and have also prepared permanent maps showing the route or routes of such pipe line construction, upon which maps are indicated the legal descriptions of the lands over which such pipe lines have been laid. I have also prepared such information (with regard to the construction of such pipe lines) as to enable the officers of the company to be advised as to such construction, as well as to indicate upon such maps (and in

such records) the locations of terminals and storage facilities necessarily a part of and in use by such pipe lines and to keep such other detailed information as would from time to time indicate the physical equipment used in the construction of and employed by such pipe lines and ter-[fol. 286] minal facilities. All such maps and records so prepared by me from time to time, have remained a part of the permanent records of the company and are available for inspection.

"11 Q. In the course of your employment with the company, have you had occasion to prepare such maps and records upon a pipe line through which refined products of the company have been transported from Enid, Oklahoma to Rock Rapids, Iowa?

"A. Yes.

"12 Q. Do you have personal knowledge of the construction of this line?

"A. Yes.

"13 Q. Were you employed on the line during the course of its construction?

"A. Yes.

"14 Q. Have you prepared maps which reveal the entire right-of-way of the line?

"A. Yes.

"15 Q. Have those maps been accurately made?

"A. Yes.

"16 Q. Have you indicated upon such maps the legal descriptions of the lands over which such pipe line was laid?

"A. Yes.

"17 Q. How are lands described in the states of Oklahoma, Kansas, Nebraska, Iowa, and South Dakota?

[fol. 287] "A. In accordance with the system known as Government Survey, viz: sections, townships and ranges.

"18 Q. Have you, in preparing such maps and records in each instance, indicated such legal descriptions upon such maps?

"A. Yes.

"19 Q. Do you have personal knowledge of the type of construction of the products line to Rock Rapids, Iowa?

"A. Yes.

"20 Q. Do you have personal knowledge of the type of construction of the terminals and storage facilities upon said line?

"A. Yes.

"21 Q. What is the size of the line?

"A. 6-5/8 inches outside diameter. Some of the pipe used was invoiced to the company at a greater weight per foot than other pipe used in the construction of the line and I am not advised as to the reduction in inside diameter measurement, if any, that would result from such difference in weight. In any event, the line has been (and is commonly) referred to in the industry, and is known as a 6 inch line.

"22 Q. At what point does the line first employ the use of storage facilities?

"A. Hutchinson, Kansas.

"23 Q. And what is the distance from Enid, Oklahoma to Hutchinson, Kansas?

"A. 113 miles.

[fol. 288] "24 Q. At what point is the next storage and terminal facility employed on the line?

"A. Superior, Nebraska.

"25 Q. At what point is the next storage and terminal facility employed on the line?

"A. Rock Rapids, Iowa.

"26 Q. And these storage and terminal facilities are all of the terminal facilities on the line?

"A. Yes.

"27 Q. What is the storage capacity at each of these points?

"A. At Hutchinson, Kansas the storage capacity is approximately 161,000 barrels, at Superior, Nebraska, it is 191,000 barrels, and at Rock Rapids, Iowa, it is 330,000 barrels.

"28 Q. Let me ask you if, in the construction of this line, the pipe was laid for any considerable distance along the public highways in any of the states involved.

"A. To the best of my recollection, the greatest distance employed for such use upon any highway was in the States of Nebraska and South Dakota and that such distances did not exceed, in either case, more than a mile.

"29 Q. Were there any circumstances that required the use of the highway in such instance?

"A. Yes, we were unable to obtain right-of-way from abutting land owners at a price that we could afford to pay and so we took the matter up with the proper county [fol. 289] officials and purchased from the counties a right-

of-way along said highways and for the privilege of laying the same we paid the counties a price which was agreed upon.

"30 Q. I notice from an examination of your map, that the line was laid from a point on the east bank of the Missouri River to a point on the west bank of the Big Sioux river.

"A. Yes.

"31 Q. What distance did the line employ in the State of South Dakota?

"A. In the neighborhood of 23 miles.

"32 Q. Do you have personal knowledge of how the right-of-way was obtained in the State of South Dakota?

"A. Yes.

"33 Q. How was it obtained?

"A. We obtained it from property owners by purchase and by right-of-way agreement on the public highways with the county officials.

"(a) for which right-of-way the company paid the county officials an agreed sum, or

"(b) received such grant of such right-of-way gratuitously.

"34 Q. Did the Champlin Refining Company ever exercise the right of condemnation at any point upon the route of the entire pipe line system?

"A. No.

"35 Q. Was any permit obtained from the State of South Dakota?

[fol. 290] "A. No.

"36 Q. Has there ever been any requirement by any of the officials of the State of South Dakota with regard to any report or other information in regard to the operation of such pipe line?"

Mr. Thomas: We object to that as immaterial, if the the Court please. The law of South Dakota, I think, is the basis of the rights and status of the pipe line.

Exam. Kelley: The objection is noted. Proceed.

Mr. Glasser: (Continuing)—

"A. The only correspondence that we have ever had with the State of South Dakota had to do with ad valorem taxation upon that part of the line laid within the State of South Dakota. Upon one occasion I visited the State

Capital at Pierre in connection with the assessment upon the pipe line, and after conferring with the State officials, was advised that inasmuch as the line was not a common carrier the matter did not concern the State and would be referred to the proper county officials of the county through which the line was laid, which was done.

"37 Q. What distance does the line traverse in the State of Iowa?

"A. I think approximately 41 miles.

"38 Q. How was the right-of-way obtained for the building of the line in the State of Iowa?

[fol. 291] "A. By purchase from the property owners.

"39 Q. Is any part of the line in the State of Iowa laid upon any highway following the direction of such highway?

"A. No.

"40 Q. Have you ever met a gentleman by the name of George F. Brigance?

"A. Yes.

"41 Q. When and where did you meet Mr. Brigance?

"A. I met him at Enid, Oklahoma on or about October 6, 1941.

"42 Q. What was the occasion of your meeting with Mr. Brigance?

"A. He was introduced to me by E. G. Wilmoth, as an engineer employed by the Socony-Vacuum Company of New York and I was directed to furnish Mr. Brigance with maps and other data which he might inquire about with relation to the Champlin products pipe line.

"43 Q. Did you furnish Mr. Brigance with such data?

"A. Yes, immediately.

"44. Q. What maps and other data did you furnish for his inspection?

"A. I furnished Mr. Brigance with a detail of maps and other data, which was a copy of a like exhibit which was forwarded to the Interstate Commerce Commission under date of July 17, 1941."

Which is the Exhibit X here that has been identified as part of Leverton's examination.

[fol. 292] "45 Q. Did you furnish for Mr. Brigance's inspection all information which he requested?

"A. Yes.

"46 Q. And did you acquaint him with the fact that the exhibit which had been handed to him was an exact copy of

the exhibit which was forwarded to the Interstate Commerce Commission?

"A. Yes.

"47 Q. After furnishing Mr. Brigance with all of the written data, maps and other papers so identified, did you give him such personal information in connection with the pipe line as he requested?

"A. Yes.

"48 Q. Now, what did you next do with Mr. Brigance?

"A. We went out and inspected the Enid Pump Station upon the products pipe line near the refinery. We followed the line as nearly as possible for several miles in order that Mr. Brigance might observe the topography of the country, observe the type of telephone line construction and gain such other information as he might be able to get from observation.

"49 Q. One final question: Do you have any assistance in the engineering duties incidental to the products pipe line of the Champlin Refining Company?

"A. I do.

"50 Q. You are the sole engineer of the department?

"A. I am."

[fol. 293] Exam. Kelley: What is the significance of this reference to Mr. Brigance?

Mr. Glasser: Well, I am going to read Brigance's evidence next. We are using him as an expert witness.

Exam. Kelley: All right.

Mr. Glasser: We are laying the ground work to qualify him.

Exam. Kelley: Off the record.

(Discussion off the record.)

Mr. Glasser: Direct examination of George F. Brigance:

"Direct examination.

"1 Q. (By Harry O. Glasser) State your name.

"A. George F. Brigance.

"2 Q. What is your occupation?

"A. Civil engineer.

"3 Q. What period of time have you been so engaged?

"A. 25 years.

"4 Q. By what company are you now employed?

"—. Magnolia Pipe Line Company.

"5 Q. In what territory?

"A. I am now working in the northern division.

"6 Q. Will you define the territory in which you are employed?

"A. New York and Pennsylvania—northern division.

"7 Q. What are your duties in your present employment insofar as those duties relate to your profession?

"A. I am Chief Engineer of Pipe Line construction for [fol. 294] such company.

"8 Q. Have you been so engaged for some time?

"A. Three years.

"9 Q. What are your duties as Chief Engineer of Pipe Line construction?

"A. To design and superintend pipe line construction for them.

"10 Q. Are you advised generally of the uses to which oil pipe lines are subjected?

"A. Yes, I am.

"11 Q. What are the general classifications of pipe lines?

"A. Generally divided into trunk lines and gathering lines.

"12 Q. Are production lines further classified?

"A. Trunk lines are divided into crude oil and products lines.

"13 Q. What methods of joining pipe are used in the construction of pipe lines?

"A. There are several methods of joining pipe. The old method was to screw joints where you threaded the end of the pipe into a collar. Now the Arc-Welding process is generally used.

"14 Q. Does the type of product to be transported determine the type of construction?

"A. Practically all products lines are welded, or should be welded, while crude oil lines can either be welded, screw [fol. 295] pipe, or dresser coupling.

"15 Q. Which is the more expensive type of construction?

"A. I would say the welded—Arc-Welding.

"16 Q. Have you had occasion in your experience with your company and in the duties of your occupation to observe the general methods of handling products distribution?

"A. Yes, in a general way.

"17 Q. How are products generally distributed?

"A. They were generally distributed by pumping from the plant of the manufacturer to the company's bulk plants distributed along the pipe line.

"18 Q. I assume now you are speaking with regard to pipe line distribution, but I am speaking in broader terms of distribution.

"A. Formerly they were usually distributed by tankers and barges, and tank cars on the railroad; now they are also distributed by truck and pipe line.

"19 Q. Does your company have any welded lines that are used for distribution of products?

"A. Yes.

"20 Q. Where are they located?

"A. We have a 6-inch line from Buffalo to Syracuse, Rochester, and Binghamton. The Socony Company also has a line from East Providence, Rhode Island to Springfield, Mass.

"21 Q. What type of construction did your company use [fol. 296] in constructing this line?

"A. Welded 6-inch line.

"22 Q. Have you recently been asked to investigate the cost of an appraisal of the products line of the Champlin Refining Company from Enid, Oklahoma to Rock Rapids, Iowa?

"A. Yes, I was asked to make such investigation.

"23 Q. Did you go to Enid for that purpose?

"A. Yes.

"24 Q. When you arrived, what information did you obtain?

"A. I looked at all of Champlin's maps of their system and I went out on the line and looked at the pump equipment, telephone line, gate valve, and other equipment.

"25 Q. Were you advised of the length of the line and given information as to the number of terminals?

"A. Yes.

"26 Q. What information was given as to terminal points?

"A. Their terminals are located at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa.

"27 Q. Did you make any investigation as to the power that was used for the pumping of such products?

"A. Yes.

"28 Q. What did your investigation reveal?

"A. That electric centrifugal pumps are used.

"29 Q. From your experience with Socony-Vacuum, and from your knowledge generally of pipe line construction, [fol. 297] are you able to estimate the cost involved in making an appraisal valuation report upon such type of line already laid in the ground?

"A. Yes."

Mr. Thomas: We object to that if he is going to be asked to state it, for the reason that it is immaterial and irrelevant. As the law requires the valuation of this pipe line, the fact that it will cost the company some money isn't any reason for not complying with the law. Further, I don't believe that the qualification as stated by this witness himself is sufficient to justify him in attempting to fix a value of cost.

Exam. Kelley: Is the witness going to make a valuation of the property?

Mr. Thomas: No. A cost. I used the wrong word. A cost of the valuation.

Exam. Kelley: Is his testimony to include an estimate of cost?

Mr. Glasser: An appraisal?

Exam. Kelley: Yes.

Mr. Glasser: Yes; a field appraisal of the line.

Exam. Kelley: It will be received over the objection—subject to the objection.

Mr. Glasser: (Continuing)—

"30 Q. From the information you were given in Enid, [fol. 298] and from personal observations made, are you able to give the Commission an estimate of the cost of an appraisal valuation of the Champlin line from Enid, Oklahoma, to Rock Rapids, Iowa,——"

Mr. Thomas: Same objection.

Mr. Glasser: "—together with its storage facilities and other physical properties now in use in operation of said line?

"Yes."

Mr. Thomas: Same objection.

Exam. Kelley: You don't need to repeat that.

Mr. Thomas: All right.

Exam. Kelley: Carry clear through.

Mr. Thomas: Carry clear through.

Exam. Kelley: Carry clear through his testimony.

Mr. Glasser: (Continuing)—

"31 Q. Were you formerly employed by the Interstate Commerce Commission?

"A. Yes.

"32 Q. In what capacity?

"A. Valuation engineer.

"33 Q. Who was your superior officer?

"A. Mr. Hood.

"34 Q. The same gentleman now engaged upon this case?

"A. Yes.

"35 Q. Have you, since severing your connection with the Commission, and prior to testifying in this case, made [fol. 299] examinations of requirements of the reports required of Champlin by the Commission?

"A. Yes.

"36 Q. Having in mind the requirements of the Commission's requested report, together with the things you observed at Enid and learned there from personal investigation, what, in your opinion, giving consideration to all the factors involved, would be the cost to Champlin Refining Company of complying with the report required upon an appraisal basis such as would be necessary to give the information requested and rerequired by the report?

"A. In my estimation, to prepare the report required by the Commission would cost Champlin $5,000.00, and such conclusion is based upon an estimate of cost per mile, which is in turn based on our costs when we made a like report to the Commission for the Magnolia Pipe Line.

"37 Q. Assuming that the Commission will require Champlin to give the appraisal value; would that expense be increased by requiring 'bell holing'?

"A. Quite considerably.

"38 Q. Would run it into an expensive report?

"A. Yes.

"39 Q. Is it possible that such expense might be further increased?

"A. It might be required for the company to furnish a [fol. 300] report on the condition of the pipe in the ground at the present time.

"40 Q. That would naturally increase the expense?

"A. Yes.

"41 Q. In what proportion?

"A. It would double it.

"42 Q. By that you mean it would double the figure heretofore given?

"A. Yes.

"43 Q. Have you had experience in appraisal work?

"A. Yes.

"44 Q. For whom?

"A. Magnolia Pipe Line Company.

"45 Q. In what area?

"A. In the Mid-Continent field and eastern division for Socony-Vacuum Oil Company.

"46 Q. Upon what type of construction?

"A. Upon both screw pipe and welded construction.

"47 Q. Will you amplify, if you care to, the details of that experience—just what you did.

"A. In 1935 I made a very thorough survey of the Magnolia pipe line system, which included its welded line, which was submitted to the Commission; and also a like survey for the eastern division of Socony-Vacuum of its 10-inch line known as the Midland division from Wood River, Illinois to Lima, Ohio.

[fol. 301] "48 Q. What type of appraisement did you make?

"A. We made an inventory of the physical properties on the line.

"49 Q. Complete?

"A. Yes.

"50 Q. And the experience you gained there is the basis for making your estimate of appraisal cost to the Champlin Company upon the report requested?

"A. Yes.

"51 Q. In making such appraisal of cost, did you take into consideration every factor that would enter into such appraisal of cost insofar as you now remember?

"A. Yes.

"52 Q. In making it, you did not give consideration to any expediency of any kind?

"A. I did not.

"53 Q. Such estimate represents your best judgment?

"A. Yes.

"54 Q. Are you generally acquainted with practicing engineers that would be capable of making such a report?

"A. Yes.

"55 Q. How many are there available for Champlin to employ?

"A. I would not know——"

Mr. Thomas: Objected to as immaterial, irrelevant.

Exam. Kelley: That objection is sustained.

[fol. 302] Mr. Glasser (continuing):

"56 Q. Do you know of any competent engineer familiar with the Commission's requirements, and sufficiently experienced to make an appraisement such as is requested, who is available for employment at this time?"

Mr. Thomas: Same objection.

Exam. Kelley: Sustained.

Mr. Glasser: Well, a part of this next answer represents an item of expense. He alluded to such matters in his answer. I think the part of the answer with reference to the additional cost that would be involved in making the report should be received.

Exam. Kelley: You may read it.

Mr. Glasser: Going down to his statement:

"Upon the occasion of my visit to Enid, I became acquainted with Roy Collier, to whom I was introduced, as Champlin's engineer. After becoming acquainted with Mr. Collier, I learned he was the sole engineer of the Champlin Company and from my experience in appraising pipe line for Magnolia, I know it would be impossible for Mr. Collier, within any considerable period of time, to personally make such an appraisal as is required by the Interstate Commerce Commission's requested report, and it would, therefore, be necessary for the Champlin Refining Company to employ a consulting engineer to complete the work within a reason-[fol. 303] able time, and the expense incident to such additional employment, in my opinion, would raise the figure I have heretofore given, namely $5,000.00.

"The number of consulting engineers available for employment is greatly limited."

And now this is the witness E. G. Wilmoth:

"Direct examination.

"1 Q. (By Harry O. Glasser) State your name:

"A. E. G. Wilmoth.

"2 Q. Where do you reside?

"A. 1801 W. Maine Street, Enid, Oklahoma.

"3 Q. What is your occupation?

"A. Employed by the Champlin Refining Company of Enid, Oklahoma.

"4 Q. In what capacity?

"A. Manager of its pipe lines.

"5 Q. And for what period of time have you been so engaged?

"A. 21 years.

"6 Q. Will you briefly state for the record what your duties as such manager are?

"A. I have charge of the construction and operation of all pipe lines owned by the Champlin Refining Company.

"7 Q. Does Champlin Refining Company have a subsidiary company that operates a pipe line system?

"A. It does.

"8 Q. What is the name of that company?

"A. Cimarron Valley Pipe Line Company.

[fol. 304] "9 Q. Under the laws of what state is that company organized?

"A. New Mexico.

"10 Q. Under the laws of what state is the Champlin Refining Company organized?

"A. New Mexico.

"11 Q. In what capacity do you serve in connection with the subsidiary Cimarron Valley Pipe Line Company?

"A. Secretary-treasurer and manager.

"12 Q. Are your duties with Cimarron any different than those with Champlin?

"A. No, sir.

"13 Q. What are the limits of the territory served by the Cimarron Valley Pipe Line Company?

"A. It operates entirely within the State of Oklahoma.

"14 Q. Does the Cimarron Valley Pipe Line Company receive into its pipe lines any crude oil products outside the State of Oklahoma?

"A. No, sir.

"15 Q. Does the Champlin Refining Company as such operate any crude oil gathering or transport lines?

"A. They do not.

"16 Q. Are you familiar with the products pipe line laid by the Champlin Refining Company from Enid, Oklahoma to Rock Rapids, Iowa?

"A. I am.

[fol. 305] "17 Q. Were you connected with the company when that line was built?

"A. I was.

"18 Q. Will you briefly state for the record the method of handling the products that are transported through the line?

"A. The pipe line receives the products from the refinery department at Enid, Oklahoma, usually in large amounts, a minimum, say, of 10,000 barrels. When the required quantity is pumped into the line, such product is followed by some other product which is pumped into the line, and such process is contin-ed indefinitely in the ordinary use of the line.

"19 Q. Are products of different type transported through the line?

"A. They are.

"20 Q. What are the products that are generally transported through the lines?

"A. Grades of gasoline, tractor fuel and kerosene.

"21 Q. How do you prevent mixture of one product with another?

"A. In practical operation of the line, any product may be put into the line, followed by any other product, with but little contamination of the two products, except that in handling kerosene, in which the flash must be kept high, such product must be kept intact by water pack.

"22 Q. When was the products line constructed?

[fol. 306] "A. The line between Enid, Oklahoma and Superior, Nebraska, was started in March, 1935.

"23 Q. And when completed?

"A. It was fully completed the latter part of that year. However, some products were put into that part of the line first completed to Hutchinson, Kansas, as early as July, and then to Superior, Nebraska, in August of 1935.

"24 Q. When was the extension of the line from Superior, Nebraska, to Rock Rapids, Iowa, completed?

"A. About May 1, 1940.

"25 Q. Do you have available the total cost of such products line and the storage and terminal facilities constructed therewith?

"A. Yes, sir.

"26 Q. What was the total cost?

"A. $3,198,028.66 as of December 31, 1940.

"27 Q. What is the measurement of the diameter of the products pipe line from Enid, Oklahoma refinery to Rock Rapids, Iowa?

"A. 6⅝" outside diameter.

"28 Q. Commonly known as 6-inch line?

"Yes, sir.

"29 Q. And of what material is it constructed?

"A. Steel.

"30 Q. How is the steel treated to prevent corrosion?

"Painted with a hot coat of paint known as bitumastic enamel.

[fol. 307] "31 Q. Is the line in its entirety so treated?

"A. It is.

"32 Q. Is the line treated in order that there may be created an anti-electrolitic ground?

"A. It is.

"33 Q. In its entirety?

"A. At each 'hot spot' that we know of.

"34 Q. Will you describe briefly the system of gate valves and connections that are in use upon the line?

"A. At approximately six mile intervals over the entire trunk line there is a six inch gate that can be closed or opened in case of emergency. At each terminal there is a strainer and master gate valve which may be opened or closed at the entrance to the terminal.

"35 Q. Will you briefly explain to the Commission the type of construction of the terminals referred to and indicate the points of their location?

"A. The first terminal is at Hutchinson, Kansas. At this point we have several large steel storage tanks into which we receive oil from our products line, usually into one or the other of two separate such tanks for each grade, which tanks run in capacity from 10,000 to 37,000 barrels.

"The second terminal is at Superior, Nebraska. There we have the same type of construction and the same sort of capacity.

[fol. 308] "The next terminal is at Rock Rapids, Iowa, and we have the same type of terminal facilities there.

"36 Q. Mr. Wilmoth, is there any place upon the line referred to where products may be taken from the line, other than at the three terminals indicated?

"A. There is not.

"37 Q. Does the company have a private telephone line which is operated in connection with such pipe line system?

"It does.

"38 Q. For the full length of the line?

"A. Yes, sir.

"39 Q. Please briefly give us a description of the telephone line.

"A. The telephone line consists of two copper lines conventionally constructed on creosote-treated poles and the poles vary in size according to interference encountered.

"40 Q. What other facilities have been constructed or are employed in the operation of said line?

"A. For the purpose of making repairs upon the line, warehouses with equipment to be used in the making of such repairs are maintained at each of the terminal points.

"All of our gasoline storage tanks are at the terminal points, and there are no gasoline storage tanks upon the line other than at such terminal points. These storage tanks are of the latest and most modern steel construction, having [fol. 309] what is known as floating roofs to prevent evaporation and fire by lightning hazard. I might say further that the pipe used in the construction of the line is lighter pipe than is customarily used for such construction, but is seamless steel and well designed to carry all pressure necessary in the use of the line.

"41 Q. Under what pressure is the line operated?

"A. Between the pressures of 700 and 850 pounds per square inch.

"42 Q. What type of power is used in the operation of the line?

"A. Electric current.

"43 Q. Is the line operated at all times at capacity?

"A. No, sir.

"44 Q. What factors enter into that problem?

"A. Seasonal demands for products principally.

"45 Q. Will you amplify that answer, please?

"A. The fluctuations that are incidental to seasonal demands, coupled with the difficulty incidental to obtaining an adequate crude oil supply necessary for uniform operation of the refinery, as well as for other refinery operative problems, makes it imperative that this company must reserve the full capacity thereof to meet the emergencies that arise in the operation of such hazardous type of business, and to make such company's position secure, it must safeguard its outlet of its manufactured product as manufactured, as it

must continually be engaged in seeking new supply of crude [fol. 310] oil at the other end of the refinery.

"The Champlin Company's storage facilities and refinery capacity are not adequate to build up storage capacity to such extent that the facilities of the pipe line could be leveled off into a use of uniform daily capacity. Therefore, the entire capacity of the line must be reserved to meet the needs imposed by the Champlin company's problems as hereinbefore indicated."

Mr. Thomas: I move that it be stricken, in the ground as being argumentative.

Exam. Kelley: We will just note your objection to the testimony.

Mr. Glasser (continuing):

"46 Q. In whose ownership does the oil that is transported through the products pipe line remain?

"A. In the Champlin Company at all times."

Mr. Thomas: Same objection there. That is merely a conclusion.

Exam. Kelley: That is a statement of fact, if the witness knows. Objection overruled.

(Discussion off the record.)

Mr. Glasser (continuing):

"47 Q. Has the Champlin products line ever at any time since its construction transported any products belonging to any other company?

[fol. 311] "A. No, sir.

"48 Q. Has the Champlin Refining Company ever transported any gasoline or other petroleum product through such line, which has been purchased from some other manufacturer?

"A. No, sir.

"49 Q. Is there any connection upon the line at any point through which any petroleum product could be put into the line, other than at the Enid refinery?

"A. No, sir.

"50 Q. What are the unloading facilities at the terminal storage tanks upon the line?

"A. Truck racks and railroad tank car racks, and in making such delivery, the product is delivered from the

storage tank to such truck or tank car and is not delivered directly from the pipe line in any instance.

"51 Q. Did you have an active part in planning the construction of the products pipe line concerning which I have been asking you?

"A. I did.

"52 Q. How was the building of the line first planned?

"A. It was planned to be built by the Cimarron Valley Pipe Line Company.

"53 Q. Is that the same Cimarron Valley Pipe Line Company that is engaged in transporting crude oil within the State of Oklahoma for the Champlin Refining Company?

[fol. 312] "A. It is.

"54 Q. And is it a subsidiary company of the Champlin Refining Company?

"A. It is.

"55 Q. And was it so at that time?

"A. It was.

"56 Q. Were you, during such period, the manager of the Cimarron Valley Pipe Line Company?

"A. I was.

"57 Q. Did you make a trip to Topeka, Kansas, in connection with the matter?

"A. I did.

"58 Q. Who accompanied you on that trip?

"A. H. G. McKeever, then one of the Champlin Refining Company's lawyers.

"59 Q. About when was it that you went to Topeka, Kansas?

"A. February, 1935.

"60 Q. Did you discuss with Mr. McKeever the procedure that was to be invoked in Kansas?

"A. Yes, sir.

"61 Q. Were you advised by Mr. McKeever as to his opinion as to what the law of Kansas was upon pipe line construction?"

Mr. Thomas: Objected to as immaterial.

Exam. Kelley: That is immaterial.

Mr. Glasser: Well, it is only material for the purposes [fol. 313] of showing that they went ahead and did what the lawyer told them to do, which they had a right to do.

Exam. Kelley: That is quite often done to the distress of the one who goes ahead at the lawyer's direction.

Mr. Glasser: But it is entitled to be received as evidence of good faith.

Exam. Kelley: It will be received just for that purpose.

Mr. Glasser: Yes. It is offered just for that purpose.

Exam. Kelley: Go ahead.

Mr. Glasser (Continuing)—

"A. I was.

"62 Q. Did he have sole charge of direction of legal steps to be taken in Kansas in that connection?

"A. He did.

"63 Q. Did you exercise your independent judgment or did you follow Mr. McKeever's advice?"

Mr. Thomas: Same objection as above stated.

Exam. Kelley: That objection can be noted all the way through here. You don't have to repeat it.

Mr. Thomas: All right.

Mr. Glasser (Continuing)—

"A. I followed Mr. McKeever's advice.

"64 Q. Were there any papers prepared in that connection?

"A. Yes, sir."

Exam. Kelley: We will take a short recess at this time.

[fol. 314] (Whereupon, a short recess was taken.)

Mr. Glasser: Shall I proceed?

Exam. Kelley: Yes.

Mr. Glasser: (Continuing)—

"65 Q. Handing you an application certified as 4728 for the State Corporation Commission of the State of Kansas, upon which your initials appear to be endorsed, I will ask you if that is a true copy of the paper which you filed upon that occasion with the Corporation Commission of the State of Kansas?"

Here is the paper and here are the initials that were put on for identification. I will offer the same in evidence as part of his examination.

Exam. Kelley: Do you have the number on this?

Mr. Glasser: Yes. Well, I referred to it by this Kansas State number 4728.

Exam. Kelley: We will refer to it here as Exhibit No. 1. It will be received.

(Exhibit No. *L*, Witness Wilmoth, marked for identification and received in evidence.)

Mr. Glasser: (Continuing)—

"A. It is.

"66 Q. Did you give certain testimony in connection with that document?

"I did.

"67 Q. Now, handing you a document which purports to [fol. 315] be a transcript of testimony taken before the Corporation Commission of Kansas in docket 15628 upon which your initials numbered two (2) appear to be endorsed, I will ask if you have refreshed your recollection by reading such document?

"A. I have.

"68 Q. Does the report of the proceedings therein made appear to be correct?

"A. It does."

Mr. Thomas: We object to that. Of course, the certified copy of that would be the proof of that rather than the testimony.

Mr. Glasser: Well, he is identifying it. The State of Kansas is certifying it. Will you mark that the appropriate number, please?

Exam. Kelley: Two. That is received as Exhibit No. 2.

(Exhibit No. —, Witness Wilmoth, marked for identification and received in evidence.)

(Discussion off the record.)

Mr. Glasser: We will offer it in evidence as part of the direct examination of the witness Wilmoth.

(Discussion off the record.)

Mr. Thomas: On the record, please. Mr. Examiner, I wish to reserve an objection to that on the ground that it doesn't appear to be certified by an official of the court. It merely seems to have been signed by the Court Reporter.

[fol. 316] Mr. Glasser: The witness testifies he examined it and identifies it with his initials and states that it is a true and correct report of what he there testified to.

Exam. Kelley: That is all right. You may proceed.

Mr. Glasser: (Continuing)—

"69 Q. Upon what predicate did you give the testimony that is there recited?

"A. The assumption that the proposed private products pipe line which was being——"

Mr. Thomas: Well, now, wait. Is that the answer?

Mr. Glasser: Yes.

Mr. Thomas: I want to object to the question 69 upon the ground that it is argumentative and self-serving, an attempt by the witness to add to testimony which is purported to have been transcribed in Exhibit No. 2.

Mr. Glasser: Now, if the objection is well taken to the answer, then the Exhibit itself should not be admitted in evidence. We certainly have a right to explain the exhibit.

Exam. Kelley: What is the purpose of offering this exhibit and testimony?

Mr. Glasser: Well, we are just trying to—the only purpose is to give the Examiner an accurate picture of every single item or thing that we did in the building of this pipe line. We could have just as well left this out, but we thought we were duty bound to give an accurate picture to [fol. 317] the Examiner, having done that at the direction of this lawyer McKeever. Now, we offer it in evidence and we have the witness explain the circumstances under which he gave the testimony. Of course, if he is not permitted to explain the testimony, then the testimony ought not be received and eliminated entirely from the record.

Exam. Kelley: It is not very long. We will receive it for any value it may have upon the proceeding.

Mr. Glasser: That is the only basis upon which it is offered.

"A. The assumption that the proposed private products pipe line which was being planned could not be built through the State of Kansas unless the operator assumed the responsibilities of a common carrier, and I had been definitely so advised by Mr. McKeever, our legal advisor. Therefore, assuming that the Champlin Refining Company would be compelled in exchange for a certificate of convenience to assume the burdens of a common carrier in the State of Kansas and inasmuch as the Cimarron Valley Pipe Line Company, in its business of gathering crude oil in Oklahoma, was already a common carrier within the State of Oklahoma, the management of the Champlin Refining Company assumed that the Cimarron Valley Pipe Line Company

should build the products pipe line through Kansas and there assume the burdens of a common carrier as it had already assumed such burden in the State of Oklahoma.

[fol. 318] "70 Q. Did such assumptions dictate your testimony there given?

"A. Yes. The testimony which I gave in that connection was an expression of willingness to conform with the common carrier requirements of the State of Kansas in order that such pipe line might be constructed and all of the commitments which I made in that testimony were upon the definite assumption that such commitments were necessary to secure a right to build such privately owned and operated pipe line, and the matter was approached from that viewpoint.

"71 Q. Did you learn soon thereafter that such assumptions were in error?

"A. Yes."

Mr. Thomas: We object to that. It is an assumption relative to a legal status or legal conclusion.

Exam. Kelley: You have already sufficient explanation of the testimony in the record. It is not necessary to go into this.

Mr. Glasser: Shall I proceed?

Exam. Kelley: Yes.

Mr. Glasser: (Continuing)—

"A. Yes. Some time after my return to Enid, and before the line was in operation, I learned from an authentic source that it was not necessary in the State of Kansas to obtain a certificate of convenience or dedicate a private pipe line to a public use for the privilege of building the same, so [fol. 319] long as such pipe line is operated as a private products pipe line, and not to be used in transporting any product except the product of the owner of such pipe line.

"72 Q. Upon being advised as to the law, what did you then do?

"A. Immediate consideration was given to a change in program which would eliminate the burdens incident to the operation of a products pipe line as a common carrier and steps were at once taken to cause the Cimarron Valley Pipe Line Company to convey to the Champlin Refining Company by bill of sale all of its property within the State of Kansas and to withdraw the Cimarron Company from the State of Kansas in order that the Champlin Refining Company might

complete the construction of the line and operate it as a private products line without assuming any of the burdens of a common carrier.

"73 Q. Were any condemnation suits filed in Kansas in the name of the Cimarron Valley Pipe Line Company?

"A. Yes.

"74 Q. What became of those suits?

"A. The Cimarron Valley Pipe Line Company had instituted four condemnation suits against 7 individuals in separate District Courts in the State of Kansas, which were dismissed and upon which satisfactory and complete settlement was made with all of the contesting land owners, so that in no instance was the right of Eminent Domain ever used in the procurement of right-of-way for said products pipe line."

[fol. 320] Now, at that point I have here photographic copies of the original documents certified by the Clerk of the Court showing the disposition of these four suits, copies of which have been furnished counsel, and we desire to have them appropriately marked and offer them in evidence.

Exam. Kelley: How many do you have?

Mr. Glasser: Four suits.

(Discussion off the record.)

Exam. Kelley: We will mark them 3, 4, 5, and 6.

(Discussion off the record.)

(Exhibit No. #, Witness Wilmoth, marked for identification.)

Mr. Glasser: Exhibit 3, being the photo copies of the certified papers in the case of Cimarron Valley Pipe Line versus Union Central Life Insurance Company, No. 6571, in the District Court of Ottawa County, Kansas. And it is stipulated that the record need not be burdened with the like——

Exam. Kelley: You don't need to state that. That is all right.

Mr. Glasser: I just want the record to account for the other three cases.

Exam. Kelley: Yes.

Mr. Glasser: That the record be not burdened with photostatic copies of the disposition of the remaining three cases

referred to by the witness, such papers being in the identical [fol. 321] form of the Exhibit No. 3.

(Discussion off the record.)

Mr. Glasser: Strike what I last stated there. Exhibit 3 offered sets forth a complete set of forms used in the institution of the four cases referred to, and attached thereto is the order of dismissal, a photographic copy of the original order of dismissal in No. 6571 in the District Court of Ottawa County, Kansas; No. 6569 in the District Court of Ottawa County, Kansas; No. 9180 in the District Court of Republic County, Kansas; and No. 22354 in the District Court of Reno County, Kansas, so that they are all four covered in that one exhibit.

Exam. Kelley: It will be received.

(Exhibit No. 3, Witness Wilmoth, Received in Evidence.)

(Discussion off the record.)

Mr. Glasser: Now, the witness has just made reference to a bill of sale which was given by the Cimarron Valley Pipe Line to the Champlin Refining Company, and I have a photo copy of that original bill of sale which I will ask the Reporter to appropriately identify and will offer that in evidence at this juncture.

Exam. Kelley: It will be received as Exhibit No. 4.

(Exhibit No. 4, Witness Wilmoth, Marked for Identification and Received in Evidence.)

Mr. Glasser: I will also offer in evidence a form of [fol. 322] assignment of right-of-way which accompanied the bill of sale which has just been offered as Exhibit 4, which assignment was used in all instances in assigning the Cimarron Valley Pipe Line Company's right-of-way to the Champlin Refining Company, which should be appropriately marked and also offered in evidence.

Exam. Kelley: Will be received as Exhibit 5.

(Exhibit No. 5, Witness Wilmoth, Marked for Identification and Received in Evidence.)

Mr. Glasser: Now, continuing to read from the top of page 10, question No. 75:

"75. Q. Did the Champlin Refining Company ever exercise the right of Eminent Domain in completing said line in any of the states through which it traverses?

"A. It did not.

"76. Q. Did the Cimarron Valley Pipe Line Company execute and deliver its Bill of Sale to the Champlin Refining Company?

"A. Following the dismissal of such cases, the Cimarron Valley Pipe Line Company executed its bill of sale on June 10, 1935, to the Champlin Refining Company, which was recorded in the office of the County Clerk, who is also known as the Registrar of Deeds, in Garfield County, Oklahoma."

That is the exhibit which has just been identified.

"77. Q. What was done with regard to assignments of right-of-way?

[fol. 323] "A. Following the execution of such bill of sale, assignments of all rights-of-way which had been procured by purchase in the State of Kansas, were recorded in the respective county seats of Kansas through which the pipe line traverses.

I might also say that like such assignments were filed in all other states in which the line traverses.

"78. Q. Did the Cimarron Valley Pipe Line Company have anything to do with such products line thereafter?

"A. After such assignments were recorded, the Cimarron Valley Pipe Line Company had nothing further to do with the construction or subsequent operation of said products line through the State of Kansas or through any other state through which the line traverses.

"79. Q. What did the Cimarron Valley Pipe Line Company do at the time it was required to make its next annual report?"

Mr. Thomas: Now, we object to that as immaterial.

Exam. Kelley: What does it have to do with this case?

Mr. Glasser: It shows their withdrawal from the State of Kansas, as evidencing the fact that they had no connection with the pipe line after it was put into operation. It is merely a recordation of the history of its withdrawal from the state.

Exam. Kelley: It is amplification of the question just——

Mr. Glasser: Well, it merely explains it in detail, and we have a couple of documents in connection with it that [fol. 324] we think ought to be in the record——

Exam. Kelley: All right. Proceed.

Mr. Glasser: —and one of the documents is a document that the other side asked us to furnish.

Exam. Kelley: Objection overruled. Proceed.

Mr. Glasser: (Continuing)—

"A. When the time came for the next annual report of the Cimarron Valley Pipe Line Company in the State of Kansas, which, as I remember, was about July 1st, the Cimarron Valley Pipe Line Company gave notice of an intention to withdraw from the State of Kansas, which intention was carried out and the Cimarron Valley Pipe Line Company from that time until now has never had any business of any kind in the State of Kansas.

"80. Q. What did the Champlin Refining Company then do in completing said products pipe line?

"A. Following the withdrawal of the Cimarron Valley Pipe Line Company from the State of Kansas, the Champlin Refining Company, which had in the meantime completed a good portion of such products line, carried to final completion the whole of the construction thereof as I have in my testimony heretofore detailed, and that when the operation of the line was commenced and the first product was transported through such line, the operation thereof and the transportation of the product was wholly conducted and carried on by the Champlin Refining Company and the products so transported then and at all times subse- [fol. 325] quent, were the products of the Champlin Refining Company, in which no other company or co-partnership had any interest whatsoever, and that the operation of such pipe line was wholly in the interest of and by the Champlin Refining Company and has been continuous from the date of its first operation until now.

"81. Q. What has been the attitude of the State of Kansas since the completion and commencement of operation of such line by the Champlin Refining Company?"

Mr. Thomas: Object to that as immaterial, irrelevant.

Exam. Kelley: Objection is overruled. Proceed with the statement.

Mr. Glasser: (Continuing)—

"A. The officers of the State of Kansas, and more particularly the officers of the respective counties through which the line traverses, have for almost seven years known that the Champlin Refining Company was operating

such line as a private pipe line and likewise, of course, have known that the only point of delivery upon said line in the State of Kansas was near the town of Hutchinson, Kansas.

"During the whole of such period of operation, no authority in the State of Kansas has requested any report or information from the Champlin Refining Company with reference to such transportation of petroleum products, recognizing at all times, as all of the officers of the State [fol. 326] of Kansas have always done, that said products pipe line was a private pipe line and as such relieved of the duties and burdens of a common carrier.

"The officers of the State of Kansas, as well as the Corporation Commission, were equally advised that no other company's products were being handled through such line, that condemnation had not been invoked by the Champlin Refining Company and that the requirements of the respective counties with reference to the crossing of public highways had been met."

Exam. Kelley: That answer, so far as this relates to the knowledge of any officials of the State of Kansas, is objectionable as indicating the knowledge or the state of mind of those officials. Your objection to that part of the answer are sustained.

Mr. Glasser: (Continuing)—

"82. Q. How have the ad valorem taxes been assessed upon the line?

"A. The pipe line in all of the states through which it traverses has always been taxed for ad valoreum taxes to the Champlin Refining Company.

"83. Q. Has the State of Kansas or any of its authorities or its public utility commission ever at any time prescribed any rules for the conduct of the Champlin products pipe line in Kansas, or has any rate ever been fixed, or any report of any kind required of the Champlin Refining Company in conformity with Sections 55-502, 503, and 504, [fol. 327] or as required of common carriers only by reason of any other statute of the State of Kansas?"

Mr. Thomas: Object to this as immaterial, irrelevant.

Exam. Kelley: It is a statement of fact. Objection is overruled.

Mr. Glasser: (Continuing)—

"A. No.

"84. Q. Has any other state through which such products pipe line traverses ever made any of such requirements within such states?

"A. No, sir."

Mr. Thomas: Same objection.

(Discussion off the record.)

Mr. Glasser: "Direct examination.

"1. Q. (By Harry O. Glasser:) State your name.

"A. L. A. Snyder.

"2. Q. Where do you reside?

"A. 1310 Indian Drive, Enid, Oklahoma.

"3. Q. What is your occupation?

"A. Vice-president in charge of sales for Champlin Refining Company.

"4. Q. For what period of time have you been so employed?

"A. Since 1929. I was first employed as a laborer in the refining department December 4, 1918. Prior to 1924 I was employed by Champlin Refining Company as traffic [fol. 328] manager and sales representative, and from 1924 until 1929 my title was sales manager.

"5. Q. Prior to employment by the Champlin Refining Company, what was your occupation?

"A. I was in the train service for the Rock Island lines.

"6. Q. For what period of time?

"A. Eleven years.

"7. Q. What was your rank at that time?

"A. Conductor in the freight service on the Indian Territory Division of the Rock Island railroad.

"8. Q. Will you briefly recount your duties as vice-president in charge of sales for the Champlin Refining Company?

"A. The position requires the supervision of sales, known as the general sales which covers the disposition of the full line of petroleum products to the jobbing trade.

"9. Q. In what states is the Champlin Company engaged in marketing petroleum products through sales representatives?

"A. In Oklahoma, Kansas, Nebraska, Colorado, Wyoming, North Dakota, South Dakota, Minnesota, Iowa, Wisconsin, Illinois, and Missouri.

"10. Q. How are the petroleum products which are marketed, delivered to the purchaser in the respective states indicated?

"A. Oklahoma, by tank car and transport truck. Kansas, transport truck and tank car from pipe line terminal at Hutchinson, Kansas, and in the case of lubricating [fol. 329] oil by company-owned trucks from Enid, Oklahoma. Nebraska, transport truck and tank car from the Superior, Nebraska terminal and the Superior pipe line terminal. Colorado, transport truck from the Hutchinson, Kansas and the Superior, Nebraska terminals. Eastern Wyoming, transport truck from the Superior, Nebraska, terminal. South Dakota, by transport truck from the Superior, Nebraska, and the Rock Rapids, Iowa, terminals. North Dakota, transport truck from the Rock Rapids, Iowa terminal. Minnesota, by tank car and transport truck from the Rock Rapids, Iowa, terminal. Northern Iowa, by truck and tank car from the Rock Rapids, Iowa, terminal. Southern Iowa, by transport truck from the Superior, Nebraska, terminal. Illinois and Wisconsin, by tank car from the Enid, Oklahoma refinery. Northern Missouri, by transport truck from the Hutchinson, Kansas, terminal. Southern Missouri, by tank car and transport truck from the Enid, Oklahoma refinery.

"11. Q. In delivering petroleum products to such transport trucks, does the Champlin Refining Company make any investigation as to the type of carrier that such type of truck happens to be?

"A. We do, in each case.

"12. Q. Give us the types of carriers to whom you deliver such petroleum products.

"A. Private contract and common carriers.

"13. Q. By whom are such carrier trucks employed? [fol. 330] "A. These transport trucks are all employed by the jobber who purchases such petroleum products.

"14. Q. Does the Champlin Refining Company have anything to do with employment of such carriers?

"A. We do not.

"15. Q. Is there any instance in which the Champlin Refining Company owns and operates transport trucks for the delivery of such petroleum products?

"A. We own and operate five 3,750-gallon transport trucks stationed at Rock Rapids, Iowa, terminal, by which deliveries are made to our company-owned outlets in

North Central Iowa, Southern Minnesota, and to jobbers and dealers in the same territory.

"I might say further that in certain instances the retail branch of the Champlin business employs outside transport carriers to haul by truck refined products from the Enid refinery, as well as all terminals on the pipe line, to bulk plants owned by the Champlin Company, out of which local dealers and consumers are served by tank wagons owned and operated by the Champlin Company.

"16. Q. Mr. Snyder, I will ask you to state if you have personal knowledge of the construction and operation of the welded products line which the Champlin Refining Company built in 1935 from Enid, Oklahoma, to the Superior, Nebraska, terminal?

"A. I do.

[fol. 331] "17 Q. You have had occasion, of course, to be at the terminals upon the line?

"A. I have.

"18 Q. Where are these terminals located?

"A. Hutchinson, Kansas, and Superior, Nebraska.

"19 Q. Did the company subsequently extend the line?

"A. Yes. The line was extended from Superior, Nebraska, to Rock Rapids, Iowa, in 1940.

"20 Q. Have you personally inspected the Rock Rapids, Iowa, terminal?

"A. I have.

"21 Q. In connection with your duties as sales manager of the Champlin Company's sales of the products transported through this pipeline, have you become acquainted with the physical operation of the line?

"A. I have.

"22 Q. Will you give us a brief resume of that operation?

"A. We forecast as nearly as possible the probable needs of all the refined products that each terminal on the line may require. Such products are then pumped to the various terminals, where they are placed in storage awaiting their sale upon the market. At these terminals, tank car loading racks and truck loading racks are provided where the products may be loaded according to the requirements of the consumer, as the method of transportation from the [fol. 332] terminal is at the option of the buyer.

"23 Q. What relation do the storage tanks at such terminal points have to the use of the pipe line equipment?

"A. They are necessary to provide ample inventory to

supply the trade in the areas served by each respective terminal and to provide additional capacity whereby stocks may be built up in the dull or winter season to provide ample inventory in the peak or summer season, as this larger inventory is very necessary during the peak season to supplement the capacity of the pipe line which would not then be sufficient to meet the summer seasonal demands.

"24 Q. What relation does the Champlin Company competition have to the need for such construction of such type of pipe line?

"A. The construction of refineries in some areas near our former markets, the use of pipe lines, barge lines and the widely used transport trucks provided sources of supply near many of our customers and was destructive of the trade connections which the Champlin Company had in the territory thus affected.

"25 Q. What has been the effect upon the Champlin Company sales of refined products in the territory which such products line serves?

"A. Prior to 1926 we were able to maintain our sales in a volume sufficient to care for the capacity of our refinery. [fol. 333] Subsequent to 1926 and until 1934, the loss of our gallonage grew at an alarming rate, for the reasons heretofore given in my testimony, until it was evident that some means should be adopted to restore this gallonage in order that the very life of the company might be continued. The only means by which this could be accomplished would be the restoration of our volume, which was secured after the construction of the products pipe line.

"In other words, the Company had enjoyed a steadily increasing business from its foundation until 1926, at which time a well-defined decline in its volume of business continued until a bottom was reached in 1934, at which time the products pipe line was planned as a means of retrieving the business that was getting away. So the line was built as quickly as possible, and as soon as built and placed in operation, immediately there came about an upward trend in the company's business, so that by 1940 there had been restored to the company a volume of business which had been enjoyed at its highest peak in 1926."

I desire to offer in evidence at this point an exhibit which is all on one piece of paper. The Valuation Section requested the Champlin Company by letter to file certain in-

formation as to its business for the first six months of 1941, and we have prepared all of that data and desire to offer the same in evidence at this point under an appropriate——

[fol. 334] Exam. Kelley: It will be received as Exhibit No. 6.

(Exhibit No. 6, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: Now, at this time I also desire to offer in evidence an additional table which shows our total sales for the first six months of 1941—which shows the total business by the Champlin Company in each of the states of Colorado, Kansas, Nebraska, Iowa, Minnesota, and South Dakota served by the pipe line, and our volume of business reduced to percentage of the total volume of business done in each of those states, which I would also like to offer in evidence, which is quite an amplification of the information requested by counsel but gives the Champlin business in relation to the whole business of the industry in all of those states, and then reduced to a final percentage which shows that our business is 3½ percent of the business done in all of those states.

Exam. Kelley: Received as Exhibit No. 7.

(Exhibit No. 7, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: (Continuing)—

"26 Q. Does the Champlin Company, in actual practice, reserve title absolutely in all such products until delivered from storage tanks at the terminal points upon said line?.

"A. We do.

"27 —. What relationship exists between seasonal re-[fol. 335] quirements and the use of the capacity of the pipe line in question, and does such relationship preclude the Champlin Company becoming a common carrier?"

Mr. Thomas: I object to that as calling for a legal conclusion.

Exam. Kelley: Objection sustained.

Mr. Glasser: We would like to have the answer. The answer is an intermixture of the relationship of seasonal requirements to the capacity of the pipe line. That is certainly——

Exam. Kelley: The answer may be read subject to the objection.

Mr. Glasser: Yes. The conclusion part can be eliminated.

"A. There is a requirement for a change in specifications in the fall months in preparation for winter, and in spring months in preparation for summer. This is due to the extremely low temperatures in the latitudes of Minnesota and North and South Dakota, which produces a distinct demand for a motor fuel of an extremely low initial boiling point to insure quick and easy starting. In the early months of fall, we anticipate that the usual prevailing weather conditions of winter will require a gasoline of materially lower initial boiling point than is required in summer months and, therefore, such gasoline, or motor fuel, is produced by the refinery and such facilities are made ready to receive such product which we describe as our winter grade motor fuel. [fol. 336] This motor fuel is of two grades; one, known as white, or third grade; the other Bronze 'House Brand,' under our trade name of Presto.

"Immediately following the movement of these special grades of gasoline, or motor fuel, there is a demand, or a specific need of light oils and kerosenes, and lower initial boiling point tractor fuels require specific attention in the movement thereof to avoid contamination, as each product is made to definite specifications in the Enid refinery. These specifications necessarily are changed in the early spring months for summer grades of White third grade and Bronze 'House Brand' Presto. In each instance, these deliveries of gasoline are necessarily placed in the storage tanks provided at the respective terminals, to be held for final disposition to the trade as required.

"In other words, in practical operation, the capacity of the line is needed by the Champlin Company at all times for its company business, inasmuch as its total storage facilities at each terminal point must be utilized in off-season periods in preparation for season peak demands which require maximum storage, together with the capacity of the line, and by reason thereof, whether the capacity of the line as at all times in use, the fact remains that it must be reserved by the Champlin Company to take care of its company requirements, and for such reason the company has at all times rigidly maintained the policy of the operation of a [fol. 337] private line, avoiding the doing of anything, or the

acceptance of any privileges or rights which could be construed as a dedication of such line to the duties of the common carrier.

"Further evidence of such position upon the company's part is shown by the fact that there are no connections with any other companies' lines or sources of supply at any point upon such line.

"28 Q. What, in your opinion, would be the economic effect on future construction of products pipe lines planned to be operated as private pipe lines, if such lines used in such private operation, nevertheless be declared common carriers?

"A. It is my opinion that any plan for the construction of a Products pipe line to be operated as a private pipe line would be abandoned if there was any indication that such line or lines would be declared common carriers."

Mr. Thomas: Objected to as involving a question of economics or business policy, which is not involved in this suit.

Mr. Glasser: I will concede that it calls for an expression of opinion upon the witness' part, but I think he is qualified to answer the question for whatever it might be worth. It might become a material question in the issue involved——

Exam. Kelley: It may be received for such bearing as it may have on the proceeding.

[fol. 338] Mr. Glasser: "A private pipe line, such as the Champlin Products line must be built specifically for the purpose of providing a company inventory of the several grades of gasoline, range oil and tractor fuel, near enough to its bulk plants and areas of consumption, to provide for quick deliveries.

"On the other hand, our company must at all times be in position to reach not only our own company bulk plants and service stations, but to meet the further necessity of creating a sufficient volume to maintain the refinery on the most economical basis, which is, at a point near its capacity. The necessity for the movement of four or five distinctly different products and to arrange for the storage thereof could only be met, at least in our case, by private operation of such products line, as a plant facility.

"29 Q. Are you familiar with the manner in which delivered prices of your products are fixed at the various terminals upon the products pipe line in question?

"A. Yes.

"30 Q. Will you explain fully and, in your answer, make such explanation with reference to each of such terminals and name any exceptions or variations that exist in such operation in any of them?

"A. When the products line was constructed, it was concluded by the management of the company that products would be marketed at terminals at a delivered price which [fol. 339] would, in addition to the F.O.B. charge at the Enid Refinery, include a charge which, for the lack of a better term, was called a differential which was fixed at such sum as would enable us to deliver at the terminal, our products F. O. B. such terminal at a price which, with the purchaser's transportation costs beyond such terminal, would equal the cost at the jobber's place of business of like products of manufacturers competing with the Champlin Company in such territory.

"When the Hutchinson, Kansas, terminal was opened in July, 1935, we established a differential of 3/8ths of a cent per gallon above the Group Three, Oklahoma Refiners, price for delivery to jobbers located in any Kansas point, and 1/4th cent per gallon to jobbers located in Colorado and Missouri. As Wichita, McPherson and other Kansas refining points were maintaining the same price F.O.B. their refinery for Colorado and Missouri points as our company was maintaining F.O.B. Enid, we immediately eliminated the differential for those points, and reduced the differential to Kansas points to 1/4th cent per gallon. This differential of 1/4th cent per gallon for the State of Kansas was in keeping with the price quoted by Kansas refiners for Kansas destination.

"The Superior, Nebraska terminal opened in August, 1935, was located in an area with no nearby refineries, and presented an entirely new marketing problem for our company. We, therefore, established as the yardstick for [fol. 340] differentials the difference between the established rail rates from Oklahoma to points in Nebraska and the newly established rail rates from Superior to points in Nebraska. As no rail rates were made possible from the Superior, Nebraska terminal to points in Colorado, Wyoming, North Dakota and South Dakota, and rail rates were established to a few Iowa points where our own plants were being operated, these latter rail rates averaging approximately one-half cent per gallon less than from Group Three (Oklahoma Refiners) we immediately established

from the Superior, Nebraska, terminal a differential of one-half cent per gallon to all points in Colorado, Wyoming, North Dakota, South Dakota and Iowa.

"The entire plan of differentials attempted to meet competitors' prices at all destinations. A differential based on rail rates only, governing our delivered prices at the Superior terminal was found to be inadequate for the purpose intended, viz: to meet competition, inasmuch as products from Kansas refineries were being delivered by truck transports at lesser prices than Champlin products priced upon such basis, and adjustments were therefore made.

"For one example, the differential to Beaver City, Nebraska as first posted in August, 1935, was .01947 per gallon. This posting was in the -arly part of the month and was reduced on August 22, 1935 to .01125 to enable delivery of Champlin products at that point on a competitive basis [fol. 341] with products from Kansas refining centers.

"Many adjustments were made in the years of 1936, 1937, 1938, and a material number in 1939, 1940, and 1941. These changes and the dates such changes became effective are shown in our current differential sheets, copies of which are available for examination."

Mr. Thomas: Off the record.

(Discussion off the record.)

Mr. Glasser: I offer in evidence, first, the Champlin Refining Company's Superior, Nebraska, terminal differential.

Exam. Kelley: That will be given Exhibit No. 8.

(Exhibit No. 8, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: Next I desire to offer in evidence the differential table, rates effective June 11, 1941, at Rock Rapids, Iowa.

Exam. Kelley: That will be received as Exhibit No. 9.

(Exhibit No. 9, Witness Snyder, marked for identification and received in evidence.)

Mr. Thomas: Rock Rapids, you say?

Mr. Glasser: Yes. It is called Champlin on the railroad.

Mr. Thomas: Champlin, oh, yes.

Mr. Glasser: They dignified us by giving the little railroad station our name.

Now, there was a Supplement No. 1 issued on June 20, at [fol. 342] that same point, covering destinations in Minnesota, made necessary by changes in railroad rates. We desire to offer in evidence the Supplement No. 1 issued June 20, 1941, for Rock Rapids.

Exam. Kelley: Exhibit No. 10 is received in evidence.

(Exhibit No. 10, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: I desire to also offer in evidence Supplement No. 2 issued September 20, 1941, for the same point, covering destinations in South Dakota.

Exam. Kelley: Exhibit 11.

(Exhibit No. 11, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: Now, outside the record.

(Discussion off the record.)

Mr. Glasser: Early in the year 19——

Mr. Thomas: Just a second please. Have you offered Supplement No. 1?

Mr. Glasser: Yes, as the first one.

(Discussion off the record.)

Mr. Glasser: Supplement No. 1, issued June 20, 1941, covering destinations in North Dakota.

Exam. Kelley: It will be given Exhibit No. 13.

(Exhibit No. 13, Witness Snyder, marked for identification and received in evidence.)

[fol. 343] (Discussion off the record.)

Mr. Glasser: Let that exhibit number also cover the original rates effective June 11, 1941, for North Dakota, which is nailed on the back of it in the Supplement.

Exam. Kelley: That is all right. It is all in one volume.

Mr. Glasser: Yes, it is self-indicated. Exhibit No. 8 covers the State of Nebraska.

Exam. Kelley: We will adjourn until two o'clock.

(Whereupon at 12:20 o'clock p.m., a recess was taken until 2:00 o'clock p.m., of the same day.)

[fol. 344] Afternoon Session, 2:00 P. M.

Exam. Kelley: The hearing will come to order.

Mr. Glasser: "Early in the year 1940, ——" Continuing to read from Answer 30 —— "Early in the year 1940, an extension of the Champlin Products line to a point approximately one mile west of Rock Rapids, Iowa was completed and the terminal opened in May, 1940. Differentials for Iowa points were established in the so-called 'Iowa Scale' prevailing at that time, and so-called 'Council Bluffs' scale for the States of Minnesota, South Dakota and North Dakota, using the difference between the through rail rates to destinations in such states and the rates established from the terminal by the railroads to the identical destinations within such states.

"On June 11th, 1941, a drastic reduction in the rail rate from Group Three, Oklahoma Refiners, to the above mentioned territory was posted by the railroads, and on June 20th, 1941, our differentials to all such points were correspondingly reduced.

"A like revision of differentials was made to approximately twenty-five points in South Dakota effective September 20th, when the through rail rates to those points were reduced by the railroads.

"21 Q. How is the Enid Refinery price fixed?

"A. Each product is offered for sale on the basis of the Chicago Journal of Commerce average price for such grade [fol. 345] of product as posted in the Thursday's issue preceding date of shipment. In the event the range between the low and the high price for each such product is 1/8th of a cent per gallon or less, the low price then becomes our 'spot' price. These prices become effective at 7:00 A. M., Friday morning and rule until the next succeeding Friday. In the event there is no change in the Chicago Journal of Commerce price, such price of the previous week prevails until there is a change. The only exception to this price policy would be in the event that the major portion of the gasoline moving into the area should be moving at prices lower than those quoted in the manner referred to above, we reserve the right to reduce the price to meet competition.

"32 Q. Do you deliver lube oils to the terminals?

"A. We do.

"33 Q. How do you make such deliveries?

"A. By truck and by rail.

"34 Q. So that, in fact, the Champlin Company delivers its lube oil to the terminals by truck and has not been made a common carrier in so doing?

"A. That is correct.

"35 Q. Is there any difference in fact in such methods of delivery and delivery of like products in a privately owned and operated pipe line?"

Mr. Thomas: Now, we object to that as calling for a legal [fol. 346] conclusion.

Mr. Glasser: We will strike that out.

Mr. Thomas: Is that "in fact" or "effect"?

Mr. Glasser: It doesn't matter. We will waive the question. It is "in effect."

Exam. Kelley: Strike that part of the testimony.

Mr. Glasser: (Continuing)—

"36 Q. Are you the same L. A. Snyder who recently gave answers to certain questions concerning the Champlin products pipe line?"

Outside of the record.

(Discussion off the record.)

Mr. Glasser: (Continuing)—

"36 Q. Are you the same L. A. Snyder who recently gave answers to certain questions concerning the Champlin products pipe line?

"A. I am.

"37 Q. It becomes necessary to ask some additional questions with regard to the procedure in use in sales of products which are delivered to the terminals upon the pipe line in question. I will, therefore, as you to state the different methods of sale which are employed by the Champlin Company under your direction or supervision.

"A. We have two types of sales, one of which is known as the 'spot market' or date of shipment sale. The other, or 'contract sale' is based on yearly contracts with the customer.

"38. Q. Through what medium are these two types of [fol. 347] sale consummated?

"A. By territorial salesmen, terminal managers, letter, telephone, and/or telegraph.

"39 Q. What do you mean by a 'spot' sale?

"A. A 'spot' sale is one made to any party at a price posted by our company effective on the date of sale.

"40 Q. How is such price posted?

"A. This price is posted in the general offices of the company at Enid, Oklahoma, and by telegram to all territorial salesmen and to all terminal managers.

"41 Q. Upon what market factors is such 'spot' price determined or fixed?

"A. Such posted price is normally based on the Chicago Journal of Commerce 'Group 3' prices as shown in the Thursday's issue preceding date of shipment, plus the differentials applicable at the terminals upon the products pipe line which have been heretofore explained in the answers that I have given to prior questions and as shown upon tables that have been furnished by me.

"42 Q. Explain the term 'Group 3' prices.

"A. 'Group 3' prices are based on the following factors:

"There are a great number of refining points, all incidentally, within the State of Oklahoma, designated by the carriers for rate making purposes as 'Group 3' points, which refining points have always been actively competi- [fol. 348] tive in the territory defined by the boundaries of the following states: Nebraska, North Dakota, South Dakota, Minnesota, Iowa, Missouri, Illinois and Wisconsin. The quotations from such group of Oklahoma refineries have long been identified as 'Group 3' quotations F. O. B. such refiner points and have been so recognized by all buyers and sellers of petroleum products in the area described, as well as by the refiners located in the St. Louis, Chicago, the States of Kansas, Texas, Louisiana and Illinois areas, even though the prices of products on a 'Group 3' quotation are quoted on products manufactured by such refiners in their respective areas far removed from any of the 'Group 3' refiner points.

"43 Q. Now, Mr. Snyder, do you have a recent copy of the Chicago Journal of Commerce?

"A. I do.

"44 Q. Will you identify that portion of that publication which relates to the answer that you have just given?

"A. I have the publication copy of the Journal for October 28, 1941, at page 10."

Photo of which is on the next page of the answers.

Photo copy of such page so identified in the issue of October 28, 1941, of the Chicago Journal of Commerce is offered in evidence as a part of the direct examination of the witness L. A. Snyder. That is merely for the purpose of showing how the paper publishes the prices.

[fol. 349] Exam. Kelley: Just a minute. Is that marked in any way?

Mr. Glasser: It is identified by the witness. It is not marked by any letter or any other identification except that it is the Chicago Journal of Commerce issue, October 20——

Exam. Kelley: We will give that Exhibit No. 14.

(Exhibit No. 14, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: (Continuing)—

"45 Q. Are there any other trade publications that should be identified in connection with the term 'spot' market?

"A. Yes. Some refiners rely on Platts Oilgram as a market reporter. Platts Oilgram is published by the National Petroleum News — five days weekly, Monday to Friday, inclusive—information being summarized in The National Petroleum News which is published weekly on Wednesday.

"I have a copy of the National Petroleum News, issue of October 29, 1941, page 40, which fully reveals the method of such quotations of refinery prices."

Now, that is photographed and attached to the next page of that number.

Exam. Kelley: Received as Exhibit 15.

(Exhibit No. 15, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: I will not take the trouble to read that because the page is self-explanatory.

[fol. 350] "46 Q. Do you have any documents which record sales, by companies other than the Champlin Com-

pany, upon which a differential, such as is used by Champlin in the operation of its products pipe line, is used in fixing delivery prices of products?

"I do. The first such document is marked Exhibit 'A' for identification."

Now, we may have to change that. He arbitrarily marked them Exhibit 'A,' and if you want to make it 16——

Exam. Kelley: No. Just let them alone. So long as he will identify them in his testimony.

(Exhibit No. A, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: (Continuing)—

"47 Q. Will you identify such document?

"A. Photo copy of original invoice E182 of the Globe Oil and Refining Company of Illinois dated January 9, 1934."

I have the original here, but this is a photostatic copy, I presume.

Exam. Kelley: We would like to have all the original documents for the record if they are available to you.

Mr. Glasser: Well, we couldn't keep those because they are the other company's private papers.

Exam. Kelley: We will just let these go in as they are.

Mr. Glasser: We offer that document as Exhibit A which [fol. 351] is marked on the face of the document, in order that it be photographed with the document. There is no need to read that. It is self-explanatory. Mr. Snyder explains this document in answer to Question 48.

"48 Q. Please interpret the document so identified.

"A. This document reflects a sale by the Globe Oil and Refining Company of Chicago, Illinois, to C. S. and M. E. McDonald operating as McDonald Oil Company, Green Bay, Wisconsin on January 9, 1934, covering one car of Globe Super Bronze gasoline at a price of .0475 per gallon F. O. B. 'Group 3', Oklahoma Refiners, less 1/8th cent per gallon advertising.

"The second section of this document is the conventional invoice E182 of January 9, 1934, and covers the shipment of tank car CTTX 8550, net gallons 8,299 at a base price of .0475 per gallon 'Group 3', Oklahoma Refiners, plus the full through freight rate from 'Group 3', Oklahoma Refiners,

to Green Bay, Wisconsin, at a rate of .46 per hundred weight (on 53,929 pounds)——"

Exam. Kelley: Excuse me. That means the rail freight rate, doesn't it?

Mr. Glasser: Yes, sir.

Exam. Kelley: Hadn't you better state that?

Mr. Glasser: It says "plus the full through freight rate." I will add the word "rail" there, Mr. Witness. Is that correct?

[fol. 352] Mr. Snyder: Correct.

Mr. Glasser: (Continuing) "—amounting to $248.07, which is what it would have cost the purchaser to have shipped such product from an Oklahoma refinery to his Green Bay Station. There is deducted, however, the rate in effect from Lemont, Illinois, to Green Bay, Wisconsin, upon 53,929 pounds at 17½ cents per hundred weight, which is the rail freight rate from Lemont, Illinois, to Green Bay, Wisconsin, which deduction amounts to $94.38, placing a net charge against the customer of $153.69 which was the differential between the cost of a shipment from Oklahoma to Green Bay, Wisconsin, and a shipment from Lemont, Illinois, to Green Bay, Wisconsin, which is the identical method employed by the Champlin Refining Company in fixing the differentials charged by it at the various terminal points on its products pipe line, with the exception of sales made at Hutchinson, Kansas, for shipment to the states of Colorado and Missouri, concerning which a full explanation was made by me in my former testimony and the exceptions in these two instances (as there stated) is made necessary by the proximity and competition of Kansas Refiners. The elimination of any charge to customers in Colorado and Missouri upon deliveries made at the Champlin terminal at Hutchinson, Kansas, is made necessary by the competition of Kansas refiners at points very closely adjacent to the Champlin Company's Hutchinson, Kansas, terminal. In other words, [fol. 353] those refiners, some of whom are not more than 50 miles from the Hutchinson, Kansas terminal, sell F. O. B. their refinery for Colorado and Missouri points, and the Champlin Company is compelled to meet that competition at its Hutchinson, Kansas, terminal.

"49 Q. Do you have an additional document that may be identified?

"A. Yes. The document is marked Exhibit 'B' for identification.

"50 Q. Please identify and interpret the document.

"A. This document marked Exhibit 'B' is a photo copy of W. H. Barber Company invoice E6660, December 26, 1939, to Reedsville Cooperative Association, Reedsville, Wisconsin, covering the shipment of tank car SERX 8103 containing 8,304 net gallons of Q treated gasoline at .0475 per gallon F. O. B. Group 3 (Oklahoma Refiners) with a freight charge on 53,896 pounds at 49 cents per hundred weight $264.09, this charge representing the full 'Group 3' (Oklahoma Refiners) rate to Reedsville, Wisconsin, less a deduction to cover 53,896 pounds at 19 cents per hundred weight, which is the freight rate from Lemont, Illinois, to Reedsville, Wisconsin, which amounts to $102.40, placing a net charge against the customer of $161.69, which was the differential between the cost of a like shipment and weight from 'Group 3' (Oklahoma Refiners) to Reedsville, Wisconsin, and a like shipment and weight from Lemont, Illinois, to Reedsville, Wisconsin, which is the identical method [fol. 354] employed by the Champlin Refining Company in fixing the differential charged by it at the various terminal points on its products pipe line, with the exception of sales made at Hutchinson, Kansas, for shipment to the states of Colorado and Missouri, concerning which a full explanation was made by me in my former testimony."

And then a photographic copy of the invoice is submitted, which we ask to have admitted in evidence.

(Exhibit No. B, Witness Snyder, Marked for Identification and Received in Evidence)

Mr. Glasser: (Continuing)—

"51 Q. Do you have another such document?

"A. I do. The document is marked Exhibit 'C' for identification.

"52 Q. Will you identify the same, please?

"A. This document which I notice has been marked Exhibit 'C' is a photo copy of the Globe Oil and Refining Company of Kansas"——

Now, the other one was of Illinois. This is a separate refining company of Kansas.

—"invoice E-3679 of May 8, 1935, to Sharpe Oil Company, Miltonvale, Kansas, for delivery by truck to Hoxie, Kansas. The invoice covers the following commodities: 42-44 kerosene, 38-40 P. W. Distillate, U. S. Motor Gasoline, and Globe Super Bronze gasoline. In conection with [fol. 355] this invoice, the freight equalization of a .0036 per gallon is a differential employed to adjust freight rates between Wichita, Kansas, refiners and Hoxie, Kansas, and McPherson, Kansas, refiners and Hoxie, Kansas, which again is an illustration of the application by another company of the principle of differential employed by the Champlin Refining Company as I have heretofore explained. It should also be noted that the shipment in question was sold basis F. O. B. Wichita, Kansas, refiners (instead of 'Group 3' refiners); however, the shipment originated at McPherson, Kansas (the Globe refinery location) which justified the application of such differential."

And then appears a photographic copy, and I direct your attention, outside the record——

(Discussion off the record.)

Mr. Glasser: We offer that in evidence.

(Exhibit No. C, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: (Continuing)—

"53 Q. Do you have another such document?

"A. I do. The document is marked Exhibit 'D' for identification.

"54 Q. Will you identify same, please?

"A. The document marked Exhibit 'D' is a Globe Oil and Refining Company of Kansas invoice E-3799 of May 9, 1935, to Sharpe Oil Company for delivery to Miltonvale, [fol. 356] Kansas, and covers 42-44 kerosene, U. S. Motor Gasoline, and Globe Super Bronze Gasoline sold on the basis of F. O. B. Wichita, Kansas, refiners (instead of 'Group 3' refiners) a freight equalization shown on the invoice of .0020 per gallon which is a differential employed to adjust the differen- in freight rates between Wichita, Kansas (refiners) and Miltonvale, Kansas, and McPherson, Kansas, (Globe refinery location) and Miltonvale, Kansas."

The document is offered in evidence and a photographic copy is set forth on the next page.

(Exhibit No. D, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: (Reading further)—

"55 Q. Do you have another such document?

"A. I do. The document is marked Exhibit 'E' for identification.

"56 Q. Will you identify same, please?

"A. The document marked Exhibit 'E' is Globe Oil and Refining Company of Kansas invoice N30686 dated April 15, 1936 to Sharpe Oil Company, Miltonvale, Kansas, for delivery to Miltonvale, Kansas, and covers U. S. Motor Gasoline, Globe Bronze Gasoline and Globe Gasoline Minimum 65 October sold basis F. O. B. Wichita, Kansas, Refiners (instead of 'Group 3' refiners).

"In connection with this invoice, a freight equalization [fol. 357] of .0020 per gallon is employed to adjust freight rates between Wichita, Kansas (refiners), and Miltonvale, Kansas, and McPherson, Kansas, (the location of the Globe refinery) and Miltonvale, Kansas, which again is an illustration of the application of the principle of differential employed by the Champlin Refining Company as heretofore explained. It should also be noted that the shipment in question was sold basis F. O. B. Wichita, Kansas Refiners (instead of 'Group 3' Oklahoma Refiners); however, the shipment originated at McPherson, Kansas, (the Globe refinery location) which justified the application of such differential."

And we offer that in evidence, and a photographic copy is set forth on the next page.

Exam. Kelley: Off the record a minute.

(Discussion off the record.)

(Exhibit No. E, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: (Continuing)—

"57 Q. Do you have another such document?

"A. I do. The document is marked Exhibit 'F' for identification.

"58 Q. Will you identify same, please?

"A. This document marked Exhibit 'F' is a photo copy of Consumers Cooperative Association, North Kansas City,

Missouri, order 7205, shipping date of April 4, 1936, invoice [fol. 358] date April 6, 1936, covering shipment in GATX 1581, a 3-compartment tank car, compartment A, and C containing 4,063 Farmco Gasoline and compartment B containing 2,032 gallons of 42-44 Co-op kerosene.

"In connection with this invoice, a freight differential of .02 per gallon is added. The invoice does not carry an explanation of the basis for such differential charge, but it is assumed that the shipment being routed Santa Fe and one line of railroad only involved, that the point of origin was at some Kansas refinery and the adjustment is doubtless predicated on 'Group 3' (Oklahoma Refiners) freight rates."

The document marked Exhibit F is offered in evidence as a part of the direct testimony of witness L. A. Snyder.

(Exhibit No. F, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: (Continuing)—

"59 Q. Do you have another such document?

"A. I do. The document is marked Exhibit 'G' for identification.

"60 Q. Will you identify same, please?

"A. This document marked Exhibit 'G' is a photo copy of the Bailey Oil Company, Kansas City, Missouri, invoice of November 9, 1934, to the Country Club Dairy Company, 3566 Troost Avenue, Kansas City, Missouri, and covers 520 gallons of Red Crown gasoline. This gasoline was de- [fol. 359] livered within my personal knowledge, in transport truck from the Sugar Creek, Missouri, refinery of the Standard Oil Company of Indiana, which is located 9 miles east of Kansas City. The invoice price of the gasoline is followed immediately by a freight item of .01680 per gallon, which at that time was the 'Group 3' rate reduced to cents per gallon on gasoline shipped from 'Group 3' (Oklahoma Refiners) to Kansas City."

The document identified as Exhibit G is offered in evidence as a part of the direct testimony of the witness, L. A. Snyder.

(Exhibit No. G, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: (Continuing)—

"61 Q. Now, Mr. Snyder, do you have personal knowledge of the custom employed by refiners owning refiners located in the territory, which you have defined in these supplemental answers, which have at such refinery or refineries lower freight rates than those available to 'Group 3' Refiners in the State of Oklahoma?

"A. I do.

"62 Q. Will you state for the record just what such practice is?

"A. I will illustrate the practice by reference to the Sinclair Company which has refineries located at Sand Springs, Oklahoma (near Tulsa), Coffeyville, Kansas, Argentine, Kansas (near Kansas City, Missouri) and East Chicago, [fol. 360] Indiana. The Sinclair Company reserves the right and has followed the practice of shipping from any one of the four refineries to northern destinations based on 'Group 3' Oklahoma quotations and when the shipment originates at one of the refineries nearer to a destination which has a lower freight rate, the practice has been to add the difference between that lower freight rate and the existing 'Group 3' freight rate.

"The same practice has been followed by the Standard of Indiana in its Neodesha, Kansas, Sugar Creek, Missouri (Kansas City) Wood River, Illinois (St. Louis) and East Chicago, Indiana refineries.

"The Shell Company, until its Arkansas City, Kansas plant was dismantled in 1937, followed the same custom in its operation of that refinery with its other refineries at Wood River, Illinois and East Chicago, Indiana.

"Within my personal knowledge, I may say that such practice has been uniform and general in the industry for more than 10 years and that any deviation therefrom (if such deviations have occurred) have been in the form of rebate or other discount."

Photo copy of document presented by the witness, which is marked Exhibit H for identification is offered in evidence.

Now, the Exhibit H is an original Champlin sales contract which is self defining. I will not take the trouble to read it.

[fol. 361] (Exhibit No. H, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: (Reading further)

"63 Q. Now, referring to the term which you used at the beginning of these answers, namely: 'contract sales', will you please explain such type of sales?

"A. 'Contract sales' cover sales made to jobbers upon their anticipated requirements for a specified or definite length of time.

"64 Q. Are such contracts made in writing?

"A. In all instances.

"65 Q. Are such contracts generally executed upon printed or typewritten forms?

"A. Yes.

"66 Q. If made in typewritten form, would such typewritten form follow the printed form that is generally used by the refiner?

"A. Yes.

"67 Q. Do you have a typewritten form which has been so used by the Champlin Refining Company upon a contract of sale with a customer?

"A. Yes. The document is marked Exhibit 'H' for identification.

"68 Q. Will you present it, please.

("Witness hands document to counsel.")

[fol. 362] That is the one superimposed here ahead of the questions instead of after.

"69 Q. Is the use of the form of the contract identified as Exhibit 'H' restricted in use to any one of the terminals on the pipe line?

"A. Yes.

"70 Q. To what one?

"A. Hutchinson, Kansas.

"71 Q. Now, I understand that the form so identified is not in use at any other terminal?

"A. That is correct.

"72 Q. Do you have available the papers which will indicate the complete transaction in a sale made at Hutchinson, Kansas, within the terms of the contract so identified as Exhibit 'H'?

"A. I do. The document is marked Exhibit 'I' for identification."

And the originals, then, are offered in evidence and photo copies substituted, and "I" is nothing more nor less than

a complete transaction under the sales contract identified as "H". That is under the form of the contract identified as "H". I might say, off the record——

(Discussion off the record.)

(Exhibit No. "I", Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser (continuing):

[fol. 363] "73 Q. Now, Mr. Snyder, will you again refer to Exhibit 'I' and give an explanation of such Exhibit by reference to each of the papers which go to make the Exhibit complete?

"A. This exhibit consisting of five pages, marked Exhibit 'I' represents a completed sale upon the contract previously identified as Exhibit 'H'. Page 1 of said exhibit being the formal Hutchinson, Kansas, terminal order to record loading instructions placed by the customer with the manager of the Hutchinson, Kansas, terminal.

Page 2 is the formal order prepared by the Enid office in triplicate form. The original is attached to the invoice covering the sale, the first copy is mailed to the customer as an acknowledgment of the order, and the second copy retained in the customer's file in the Champlin Company office for reference.

"Page 3 is a memorandum copy of the Bill of Lading covering the shipment of tank car HHCX 643 from the Hutchinson, Kansas terminal to Funk and Young, Concordia, Kansas.

"Page 4 is the formal loading report giving the description of the product, the number of gallons loaded in the car, the seal numbers with which car is sealed, the signature of the rack foreman and loader.

"Page 5 is a formal invoice covering the shipment of HHCX 643 containing 8,002 net gallons of gasoline shipped from the Hutchinson, Kansas, terminal to Funk and Young, [fol. 364] Concordia, Kansas.

"74 Q. I believe you have already stated that the sales shown on Exhibit 'I' were made upon the contract which was identified as Exhibit 'H'.

"A. That is correct.

"75 Q. Now, Mr. Snyder, do you have an original signed contract covering sale at the Hutchinson, Kansas, terminal where the customer enclosing a purchase under such con-

tract received the products at the Hutchinson, Kansas, terminal and transported the same therefrom to his place of business by truck?

This first one was by railroad tank car. Now, this next one is by truck.

"A. I do. The document is marked Exhibit 'J' for identification."

And it is set forth, and here the original copy is photographed and photostatic copies are submitted.

(Exhibit J, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser (continuing):

"76 Q. Do you have available the papers which will indicate the complete transaction in a sale made at Hutchinson, Kansas, within the terms of the contract so identified as Exhibit 'J'?

"A. I do. The document is marked Exhibit 'K' for identification."

And photographic copies of the documents are attached, [fol. 365] and I will not take the trouble to read them.

(Exhibit No. K, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: (Continuing)—

"77 Q. Now, Mr. Snyder, will you again refer to Exhibit 'K', pages 1, 2 and 3, and give an explanation of such exhibit by reference to each of the papers which go to make the exhibit complete?

"A. This exhibit, consisting of three pages, marked Exhibit 'K' represents a completed sale upon the contract previously identified as Exhibit 'J'. Page 1 of said exhibit is the formal Hutchinson, Kansas, terminal order upon a purchase placed by the customer with the manager of the Hutchinson, Kansas, terminal.

"Page 2 is the Hutchinson, Kansas, pipe line terminal loading ticket.

"Page 3 is the formal invoice covering the shipment of one transport truck load of gasoline from the Hutchinson, Kansas, terminal storage to Jack Brown at Lewis, Kansas.

"78 Q. Now, Mr. Snyder, wherein does Exhibit 'K' differ from Exhibit 'I'?

"A. Only in that 'K' is a truck purchase by the customer in his transport truck, while 'I' is a tank car purchase by the customer.

"79 Q. Do you have multi process copies form which has [fol. 366] been used by the Champlin Refining Company upon a contract of sale with a customer at the Superior, Nebraska, terminal upon said pipe line?

"A. I do. The document is marked Exhibit 'L' for identification.

"80 Q. Will you present it, please?

"(Witness presents papers to counsel.)"

And it is attached at the next page and consists of two pages, photo copies of the original signatures, and it is the original document. This is offered in evidence.

(Exhibit L, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: (Reading):

"32 Q. Now, I understand that the form so identified as Exhibit 'L', pages 1 and 2, is not in use at any other terminal?

"A. That is correct.

"83 Q. Do you have available the papers which will indicate a complete transaction in a sale made at Superior, Nebraska, within the terms of the contract so identified as Exhibit 'L'?

"A. I do. The document is marked Exhibit 'M' for identification.

"84 Q. Now, Mr. Snyder, will you again refer to Exhibit 'M', pages 1, 2, 3, 4, and 5 and give explanation of such by reference to each of the papers which go to make the [fol. 367] Exhibit complete?

"A. This exhibit consists of 5 pages marked Exhibit 'M' and represents a completed sale upon the contract previously identified as Exhibit 'L'.

"Page 1 of said exhibit being the formal Superior, Nebraska, terminal order to record loading instructions teletyped from the Enid General office of the Champlin Company to the manager of the Superior, Nebraska, terminal.

"Page 2 is a formal order prepared at the Enid office upon receipt of a Western Union wire there from the customer upon which the instructions contained upon page 1 were entered.

"Page 3 is a memorandum copy of the Bill of Lading covering the shipment of tank car HHCX 78 from the Superior, Nebraska terminal to destination.

"Page 4 is a formal loading report covering loading information giving the specifications, the stencil capacity of the car and the number of the tank from which loading was made in addition to the seal numbers applied at the terminal.

"Page 5 is the formal invoice issued by the En'd general office of the Champlin Company to the Farmers Union Cooperative Supply Company, Beatrice, Nebraska.

"85 Q. Do the papers which have been identified as Exhibit 'M' conform with like papers identified as Exhibit 'I'?

"A. They do. They conform and serve the same purpose."

And then are photo copies of the five papers.

[fol. 368] (Exhibit M, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: (Continuing)—

"86 Q. Do you have a multi process form used by the Champlin Refining Company upon a contract of sale with a customer at the Superior, Nebraska terminal upon said pipe line under which contract products were delivered to the customer for his transportation by transport truck?

"A. I do. The document is marked Exhibit 'N' for identification."

And is so offered in evidence and then there is set up in the document a photographic copy of the original signatures.

(Exhibit No. N, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: (Continuing)—

"87 Q. I understand that the form so identified as Exhibit 'N', pages 1 and 2 is in use only at the Superior, Nebraska, terminal?

"A. That is correct.

"88 Q. Do you have available the papers which will indicate the complete transaction in a sale made at Superior, Nebraska, within the terms of the contract identified as Exhibit 'N'?

"A. I do. The document is marked Exhibit 'O' for identification."

And is attached on the next page.

[fol. 369] "89 Q. Now, Mr. Snyder, will you again refer to Exhibit 'O', pages 1, 2, and 3, and give an explanation of such documents by reference to each of the papers which go to make the exhibit complete?

"A. This exhibit consists of three pages marked Exhibit 'O' and represents a completed transport truck sale upon the contract previously identified as Exhibit 'N'. Page 1 of said exhibit is the formal Superior, Nebraska, terminal order to record loading instructions placed by the customer with the manager of the Superior, Nebraska, terminal.

"Page 2 of said exhibit is the Superior, Nebraska, pipe line terminal loading ticket.

"Page 3 is the formal invoice covering the shipment of one transport truck load of distillate, kerosene and gasoline from the Superior, Nebraska, terminal storage to W. E. Amos, Shelton, Nebraska, hauled by truck by L. D. Essinger, licensed transporter with liquid fuel carriers permit No. 890 issued by the State of Nebraska."

And then comes the photographic copies of the document.

(Exhibit No. O, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: (Continuing)—

"90 Q. Do you have multi process form which has been used by the Champlin Refining Company upon a contract of sale with a customer at the Rock Rapids, Iowa, terminal [fol. 370] upon said line which was delivered by the Rock Rapids, Iowa, terminal to the purchaser's order in a railroad tank car?

"—: I do. The document is marked Exhibit 'P', pages 1 and 2 for identification.

"91 Q. Will you present the document, please?

"(Witness hands paper to counsel.)"

"92 Q. Mr. Snyder, I will ask you if such form of sales contract identified as Exhibit 'P' is exclusively used with jobbers at the Rock Rapids, Iowa, terminal?

"A. It is."

And then a photo copy of the original document is inserted.

(Exhibit No. P, Witness Snyder, marked for identification and received in evidence.)

Mr. Glasser: (Continuing)—

"93 Q. Do you have available the papers which will indicate a complete transaction in a sale made at Rock Rapids, Iowa, within the terms of the contract identified as Exhibit 'P' upon which delivery was made to the customer by the Rock Rapids, Iowa, terminal by tank car?

"A. I do. The document is marked Exhibit 'Q', pages 1, 2, 3, 4, and 5 for identification.

"(Witness hands papers to counsel.)

"94 Q. Now, Mr. Snyder, will you again refer to Exhibit 'Q', pages 1, 2, 3, 4, and 5 and give explanation of such by reference to each of the papers which go to make the Ex- [fol. 371] hibit complete?

"A. Page 1 of Exhibit 'Q' is the formal order prepared at the Enid office upon receipt of a Western Union wire there from the customer requesting shipment of one 8,000 gallon car of kerosene.

"Page 2 of said exhibit is the formal Rock Rapids, Iowa, terminal order to record loading instructions teletyped from the Enid general office of the Champlin Refining Company to the manager of the Rock Rapids, Iowa terminal. It will be noted in connection with this exhibit that an incorrect differential was applied which was noticed by the auditor and corrected in pencil upon the page of the exhibit so identified. In this connection, I also wish to state that the differential shown on the contract identified as Exhibit 'P', pages 1 and 2 is shown to be .02508 per gallon which was the differential in use prior to June 20, 1941, while the differential .02145 shown upon Exhibit 'Q', page 2 was the differential in use subsequent to June 20, 1941. In my reply to Question 30, I have heretofore given the reason for such change in differential.

"Page 3 of said exhibit is a formal loading report covering loading information giving the specification, the stencil capacity of the car and the number of the tank from which loading was made, in addition to the seal numbers applied at the terminal.

"Page 4 is a memorandum copy of the Bill of Lading [fol. 372] covering the shipment of tank car HHCX 626 from the Rock Rapids, Iowa terminal (Champlin) to destination.

"Page 5 is a formal invoice issued by the Enid general office of the Champlin Refining Company to the Harmon Oil Company at Carthage, South Dakota."

And then follows the photographic copy of the exhibits.

(Exhibit No. Q, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: (Continuing)—

"95. Q. Do you have an original signed contract covering sale at the Rock Rapids, Iowa, terminal where the customer in closing a purchase under such contract received the products at the Rock Rapids, Iowa, terminal and transported the same therefrom to his place of business by truck?

"A. I do. The document is marked Exhibit 'R', pages 1 and 2 for identification."

Photo copy follows on the next page.

(Exhibit No. R, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: (Continuing)—

"96. Q. Now, do I understand that the form of contract so identified as Exhibit 'R', pages 1 and 2 is the only form of jobbers contract in use at the Rock Rapids, Iowa, terminal?

"A. That is correct.

"97. Q. Do you have available the papers which will in- [fol. 373] dicate a complete transaction in a sale made at Rock Rapids, Iowa, within the terms of the contract identified as Exhibit 'R', pages 1 and 2 where the customer in closing his purchase under such contract received the products at the Rock Rapids, Iowa, terminal and transported the same therefrom to his place of business by truck?

"A. I do. The document is marked Exhibit 'S', pages 1, 2, and 3, for identification."

And then occur the photographic copies of that document.

(Exhibit No. S, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: (Continuing)—

"98. Q. Will you please again refer to Exhibit 'S', pages 1, 2 and 3 and give explanation of such by reference to each of the papers which go to make the exhibit complete?

"A. Page 1 of said exhibit is the formal Rock Rapids, Iowa, terminal order upon a purchase placed by the customer with the manager of the Rock Rapids, Iowa, terminal.

"Page 2 is the Rock Rapids, Iowa, pipe line terminal loading ticket.

"Page 3 is the formal invoice covering the shipment of one transport load of gasoline from the Rock Rapids, Iowa, terminal storage to the Daggett Implement Company, Park Rapids, Minnesota.

"99 Q. Something has been said about 'spot' sales and [fol. 374] I will ask you if you have available papers which will indicate a complete transaction in a 'spot' sale as that term was defined by you in the answers which you have heretofore given.

"A. I do. The document is marked Exhibit 'T', pages 1, 2, and 3 for identification.

"(Witness hands papers to counsel.)"

And it is photographed and inserted.

(Exhibit No. T, Witness Snyder, Marked for Identification and Received in Evidence.)

Mr. Glasser: (Continuing)—

"100. Q. Now, Mr. Snyder, will you again refer to Exhibit 'T', pages 1, 2 and 3, and give explanation of such papers by reference to each of the same?

"A. This exhibit consists of three pages marked Exhibit 'T' and represents a completed 'spot' sale as that term has been heretofore defined. Page 1 of said exhibit is the Rock Rapids, Iowa, terminal formal order entered at Rock Rapids, Iowa, in response to a telephone order by J. J. O'Connel of Le Sueur, Minnesota, requesting ship-

ment of approximately 2,000 gallons of 72-74 Oct. gasoline, approximately 500 gallons of 60.62-437 U. S. Motor gasoline, and approximately 1,250 gallons of 39.41 Prime White distillate, to the purchaser, for delivery at St. Thomas, Minnesota, by Champlin Refining Company's truck.

"Page 2 is a formal Rock Rapids, Iowa, pipe line ter-
[fol. 375] minal loading ticket covering this order.

"Page 3 is the formal invoice of October 19, 1941, covering the order and delivery as placed by Mr. O'Connell as shown upon page 1 of the exhibit. Products covered by this order were delivered by Champlin Refining Company truck to the customer's destination at delivered prices shown on page 3 of the exhibit. It will be noted that there is no transportation, differential or handling charge shown on the invoice.

"101. Q. Wherein does the transaction shown by Exhibit 'T', pages 1, 2 and 3, differ, if there is any difference, from the ordinary 'spot' sale concerning which you have heretofore testified?

"A. Exhibit 'T' shows a delivered price F.O.B. destination made by reason of the delivery of such products by company trucks, whereas in the ordinary 'spot' sale at the pipe line terminal such delivery would not be made by company trucks and the pricing of the product by the differential method, would be the method so employed, as I have heretofore fully explained in my testimony.

"102. Q. Now Mr. Snyder, have you explained every type of sale made to jobbers at the terminals on the pipe line in question?

"A. I have.

"103. Q. Are any sales made at any of these terminals to any person or persons other than jobbers?

[fol. 376] "A. There are.

"104. Q. Please amplify.

"A. Sales are made at the Hutchinson, Kansas, terminal to the Tide Water Associated Oil Company, a refiner, only.

"Sales are made at the Superior, Nebraska, terminal to the National Refining Company and the Derby Oil Company, both refiners.

"Sales are also made at the Superior, Nebraska, terminal to the following named brokers: Farmers Union State Exchange of Omaha, Nebraska, and Nebraska Farmers Association of Wahoo, Nebraska.

"Sales are also made at the Rock Rapids, Iowa, terminal to the following named refiners: National Refining Company and Pure Oil Company; and to the following named brokers: Midland Cooperative Exchage and W. H. Barber Company.

"105. Q. Wherein do the contracts with the above named refiners and brokers at the various terminals differ, if in any particular, from the contracts with jobbers at such terminals?

"A. The contracts are the same in all particulars save that a reduction is made to such refiners and brokers in the base (or Group 3, Refiners) price.

"106. Q. By that do I understand that a difference in the 'Group 3' (Oklahoma Refiners price) is reduced so that such refiners and brokers are enabled to retain a [fol. 377] commission and be on the competitive market?

"A. That is correct.

"107. Q. Mr. Snyder, has there ever been any trade with any other company on any product moving through the Champlin products line?

"A. No, sir, absolutely not.

"108. Q. Has the Champlin Company ever made any contract of sale of products moving through such line, other than as identified in your answers which have been given in response to the questions which I have asked you?

"A. No, sir.

"109. Q. Has the Champlin Company ever used in any instance, or at any time or place, any method of pricing products or recording sales of such products moving through such pipe line other than as stated by you in the foregoing answers?

"A. No, sir.

"110. Q. Mr. Snyder, I have noticed pen and pencil notations upon a number of exhibits which have been identified as a part of your testimony, which do not seem to have any relation to the context of such documents. Will you please explain?

"A. Such marks are notations made by the Champlin auditors, or office employees, for company purposes only and are without bearing upon such documents as herein used or identified.

"111. Q. Does the Champlin Company have available for inspection in its office files at Enid a record upon each [fol. 378] tank car and truck sale (in the form of the

exhibits identified as 'I', 'K', 'M', 'Q', 'S', and 'T' herein) which it has made to any customer at each of the storage plants in use at each terminal on said pipe line?

"A. It does."

Now, I have a number of other exhibits. I would like to offer all of these exhibits before you cross-examine Mr. Snyder, so that if you want to cover any of them in your examination you may do so.

Mr. Thomas: All right.

Mr. Glasser: Now, I first desire to offer in evidence a complete set of papers that have to do with the organization of the Champlin Refining Company, a New Mexico corporation. Now, I have them all in one exhibit, but there are a number of documents, and I don't know whether it would be better to put them in separately——

Exam. Kelley: Put them in as one exhibit if you will, please.

Mr. Glasser: That is it. They will be more convenient for use hereafter.

Exam. Kelley: Well, they will be marked Exhibit 16.

(Exhibit No. 16, Marked for Identification.)

Mr. Glasser: Now, that is Exhibit 16, and photographic copies of all papers relating—three separate papers bound as a single document and relate to the incorporation of the [fol. 379] Champlin Company of the State of New Mexico, amendments to its Articles of Incorporation, consolidation of another small company with the Champlin Company, the certificate of the State of Oklahoma authorizing the corporation to function in the State of Oklahoma and appointing and designating a State agent for service; a like certificate from the State of Kansas authorizing it to function as a foreign corporation, also a certificate from the State of Kansas authorizing an increase in its capital stock, also a document designating a lawyer in Lincoln, Nebraska, as service agent in that State, and then a certificate from the State of South Dakota authorizing us to go into that State and a certificate from the State of Iowa authorizing the Champlin Company to go into the State of Iowa.

Now, we have furnished counsel with a copy of all of these documents and we have one here for the Examiner.

(Discussion off the record.)

Mr. Glasser: Now, I offer in evidence as Exhibit 17 three copies—I desire to offer in evidence three copies of the certificate of incorporation of the Cimarron Valley Pipe Line in the State of New Mexico, one copy—offer in evidence the certificate of incorporation of the Cimarron Valley Pipe Line.

Exam. Kelley: Exhibit 17.

(Exhibit No. 17, Marked for Identification.)

Mr. Glasser: I desire also to offer in evidence an amendment to that certificate of incorporation of the Cimarron [fol. 380] Valley Pipe Line Company.

Exam. Kelley: Eighteen.

(Exhibit No. 18, Marked for Identification.)

Mr. Thomas: Are they receiving successive numbers, those two?

Mr. Glasser: Yes. That is No. 18.

Mr. Thomas: So that is 17 and 18.

Mr. Glasser: I also desire to offer in evidence a photographic copy of the certificate of the State of Oklahoma authorizing the Cimarron Valley Pipe Line Company to do business in the State of Oklahoma, a copy of which has been furnished counsel.

Exam. Kelley: Nineteen.

(Exhibit No. 19, Marked for Identification.)

Mr. Glasser: Then I desire to offer in evidence a photo copy of the certificate authorizing an increase of capital stock of the Cimarron Company in the State of Oklahoma.

Exam. Kelley: Twenty.

(Exhibit No. 20, Marked for Identification.)

Mr. Glasser: Then I desire to offer in evidence photo copy of the certificate of the State of Kansas authorizing the Cimarron Valley Pipe Line Company to do business in the State of Kansas. That will be 21.

(Exhibit No. 21, Marked for Identification.)

Mr. Glasser: And then I offer in evidence appointment of [fol. 381] resident agent of the State of Nebraska by the Cimarron Valley Pipe Line Company.

(Exhibit No. 22, Marked for Identification.)

Mr. Glasser: Then I desire to offer in evidence photo copy of the certificate authorizing the Cimarron Valley Pipe Line Company, a New Mexico corporation, to do business in the State of Nebraska.

Exam. Kelley: That is 23.

(Exhibit No. 23, Marked for Identification.)

Mr. Glasser: I desire to offer in evidence a photo copy of the certificate of the State Corporation Commission of the State of Kansas, which authorized on the 28th of February, 1935, the Cimarron Valley Pipe Line Company to go into the State of Kansas to build this pipe line.

(Exhibit No. 24, Marked for Identification.)

Mr. Glasser: Now, I desire to offer in evidence a photo of order of the Kansas Commission revoking the certificate which has just been identified in evidence.

Mr. Thomas: What is the date of that last item?

Mr. Glasser: This is the 11th day of October, 1941, I believe, yes, 11th day. Do you have a copy of that?

Mr. Thomas: Yes, I have.

Exam. Kelley: This is 25.

(Exhibit No. 25, Marked for Identification.)

Mr. Glasser: I desire to offer in evidence an exhibit [fol. 382] which sets forth the form of the application that was submitted to each—Board of County Commissioners in each county in the respective states through which the line was originally built to Superior, Nebraska. Those are the applications that were filed with the Board of County Commissioners.

Exam. Kelley: Twenty-six.

(Exhibit No. 26, Marked for Identification.)

Mr. Glasser: Now, I desire to offer in evidence the form of the order that was entered by each Board of County Commissioners in the respective counties named.

Exam. Kelley: Twenty-seven.

(Exhibit No. 27, Marked for Identification.)

Mr. Glasser: Now, I desire to offer in evidence the form of the certificate granted by the State of Oklahoma to cross highways in the State of Oklahoma, which is authorized

by the State Highway Commissions. That will be Exhibit 28.

(Exhibit No. 28, Marked for Identification.)

Mr. Glasser: I offer the same document with reference to the State of Kansas where it is called an application for excavation.

Mr. Thomas: What was that application?

Mr. Glaser: For excavation *of* the State of Kansas to go onto the highways and cross them.

Exam. Kelley: That is 29.

(Exhibit No. 29, Marked for Identification.)

[fol. 383] Mr. Glasser: The same document that is required in the State of Nebraska to cross highways in the State of Nebraska.

(Exhibit No. 30, Marked for Identification.)

Mr. Glasser: Now, I desire to offer in evidence—I offer the form of the application of the Champlin Refining Company for permission to construct and complete the line from Superior, Nebraska, to Rock Rapids, Iowa, through counties in Nebraska.

(Exhibit No. 31, Marked for Identification.)

Mr. Glasser: Now, I offer in evidence the order made upon the application just identified in the State of Nebraska.

Exam. Kelley: That is 32.

(Exhibit No. 32, Marked for Identification.)

Mr. Thomas: Order of the County Commissioners?

Mr. Glasser: Yes, in the respective counties.

Now, I offer in evidence a complete set of papers covering an application supplemental and an order covering a deal with the Board of County Commissioners of Nuckolls County, Nebraska, where a special situation arose in connection with the building of the line.

Exam. Kelley: It was a deal, you say?

Mr. Glasser: Yes. We had to pay them some money to cross a highway there.

Exam. Kelley: That sounds bad on the record.

(Discussion off the record.)

[fol. 384] (Exhibit No. 33, Marked for Identification.)

Mr. Glasser: The next exhibit covers a special problem that was presented in Cuming County, Nebraska, and this exhibit reflects the transaction in that connection and the settlement with the County Commissioners.

(Exhibit No. 34, Marked for Identification.)

Mr. Glasser: I now offer in evidence the papers which—copies of the papers which cover the pipe line right-of-way in Union County, South Dakota, which is the only county in the State of South Dakota in which the line is laid.

Exam. Kelley: That is 35.

(Exhibit No. 35, Marked for Identification.)

Mr. Glasser: I was going to direct attention to the fact that there is no opening of the line in the State of South Dakota. It crosses the State but does not have any opening in the State.

Exam. Kelley: Off the record.

(Discussion off the record.)

Mr. Glasser: Now, I offer in evidence a document which is the application which was filed with the State of Nebraska by the Champlin Company for a permit to cross the highways in that State.

Exam. Kelley: Thirty-six.

(Exhibit No. 36, Marked for Identification.)

Mr. Glasser: I now offer in evidence copies of corre-
[fol. 385] spondence with the Highway Department of the State of South Dakota with reference to the building of the line across Union County, South Dakota.

Exam. Kelley: Thirty-seven.

(Exhibit No. 37, Marked for Identification.)

Mr. Glasser: Offer in evidence a document which is the photo copy of the—or is the authority of the War Department to cross the Missouri River.

(Exhibit No. 38, Marked for Identification.)

Mr. Glasser: I now offer in evidence a document which is authority to construct a six-inch pipe line in the State of Iowa from the—Lyon county, from the State Highway Commission.

Exam. Kelley: That is 39.

(Exhibit No. 39, Marked for Identification.)

Mr. Glasser: And the same document in Sioux County, Iowa.

Exam. Kelley: 40.

(Exhibit No. 40, Marked for Identification.)

Mr. Glasser: I also offer in evidence a complete copy of the application filed with the Iowa State Commerce Commission for a permit to construct, operate and maintain pipe line in Lyon, Sioux, and Plymouth Counties in that State, a complete file on the entire matter.

Exam. Kelley: That is 41.

(Exhibit No. 41, Marked for Identification.)

Mr. Glasser: The corresponding order as a result of the [fol. 386] application just identified in the State of Iowa.

(Exhibit No. 42, Marked for Identification.)

Mr. Glasser: I desire to offer in evidence a copy of the letter dated October 7, 1941, addressed to the Commerce Commission of the State of Iowa with reference to the order just last identified.

(Exhibit No. 43, Marked for Identification.)

Mr. Glasser: And also in evidence photo copy of the new permit issued by the State of Iowa as a result of the letter which was written on October 7, 1941.

Exam. Kelley: That is 44.

(Exhibit No. 44, Marked for Identification.)

Mr. Glasser: Now, so far as I am able at this moment to recall, this covers all of the exhibits that we desire to offer in evidence, and if there are any others——

Mr. Thomas: Well, I mentioned a few minutes ago the applications made by the Cimarron and the Champlin Company for authority to do business, you both being foreign corporations, you see,——

Mr. Glasser: Well, I——

Mr. Thomas: ——in the States of Oklahoma, Kansas, Nebraska, and you said that you had them but I don't believe you—I don't think you have given us copies of those.

(Discussion off the record.)

Exam. Kelley: Let the record show that Exhibits 16 to [fol. 387] 44 are received in evidence, and we will take a short recess.

(Exhibits Nos. 16 to 44, inclusive, Received in Evidence.)

(Whereupon a short recess was had.)

Mr. Glasser: At this time we offer Mr. Leo Snyder for cross-examination.

Mr. Thomas: If the Court please, just before adjournment we were discussing that requirement of copy of the application or license—the right of the Cimarron Company and the Champlin Company to do business in Oklahoma, and after consultation and consideration I think that they ought to supply that. I submit that the Examiner should——

Mr. Glasser: Well, counsel can write the Secretary of State of the respective States and get a certified copy of those documents and examine them when they come to him, and if he thinks they are important I will stipulate that he may come down and have the Reporter put them in the record and give them an appropriate number.

Mr. Thomas: All those that you filed there are available and it seems to me that if you are setting out a picture of the whole origin of this business it should be included.

Exam. Kelley: Mr. Glasser, do you understand what Mr. Thomas is asking you?

Mr. Glasser: Yes. He is asking for the applications upon which the State gave us a right to do business in these States.

[fol. 388] Mr. Thomas: That is right.

Exam. Kelley: Have you any objection?

Mr. Glasser: Yes, because I don't think it is necessary. Now, take, for instance, on the Oklahoma certificate that we have here, the certificate recites what we filed down there, that we merely filed an authenticated copy of our articles of Incorporation and appointed a resident agent. That is all that the law requires.

Exam. Kelley: Your Articles of Incorporation are all there?

Mr. Glasser: Yes, they are. They are all certified here under the seal of the State of New Mexico. We appointed a resident agent, and that is all we did in Oklahoma. Now, it would be merely repetition of those papers, so far as

the State of Oklahoma is concerned. Now, we come to the State of Kansas, and they make a certificate here, they show that all we did, we filed a copy of our articles of incorporation. There is the application; "This is to certify that the Champlin Refining Company, a foreign corporation, organized under the laws of the State of New Mexico, has complied with the laws of the State of Kansas relating to such corporations and is authorized to engage in business in this State as a foreign corporation."

Now, we come to Nebraska—well, first, State of South Dakota, and the only thing we had to do there, according to [fol. 389] this certificate, was to file our Articles of Incorporation, pay $25, and agree that we will appoint a resident agent, and we make the further agreement that we will not enter into any combination, conspiracy, trust pool, agreement, or other contract to violate the monopoly laws.

Now, when you come to Iowa, all we have to do there is file our Articles of Incorporation, appoint a resident agent, and agree to be bound by the laws of the State of Iowa.

Mr. Thomas: The fact that they filed that, Mr. Examiner, doesn't indicate that that is all that they have put in their application. That is the reason I say that for a full picture we should have copies of their applications to these various States upon which certificates were issued.

Exam. Kelley: Are you interested in more States than Oklahoma? You mentioned Oklahoma.

Mr. Thomas: Let us see. They have the application in one State. What is that?

Mr. Glasser: Kansas.

Mr. Thomas: Well, I think that they should put in their applications in Nebraska.

Exam. Kelley: Are the applications any different than in other States?

Mr. Glasser: No. They are alike in all States. We file our Articles of Incorporation, pay the fee, and appoint a resident agent. That is all we do.

[fol. 390] Exam. Kelley: I don't see any need for duplication, if that is all there is to it.

Mr. Glasser: How would it be if I mail you the documents and satisfy you in that regard, or, if you wish to do so, if you will write the Attorney General of those States he will furnish you that.

Mr. Thomas: That is fine. Suppose you send me those Articles for inspection, and if the certificate does fully

set out the application I presume we won't be further burdened.

Mr. Glasser: I presume your inquiry is predicated upon the thought that perhaps we might have made some representation that isn't shown in the certificate.

Mr. Thomas: That is possible.

Mr. Glasser: Of course, I will say to you, as one lawyer to another, that we didn't.

Exam. Kelley: Well, let us not have anything further on the record than that.

Will you proceed?

(Discussion off the record.)

[fol. 391] Cross-examination (L. A. Snyder).

By Mr. Thomas:

Q. Mr. Snyder, in your answer to question 10 you speak of deliveries by your company in Kansas and Nebraska, Colorado, Wyoming, Iowa and North Missouri. I will ask you whether or not the products of which you speak are products from you through your products pipe line from Enid to the pipe line terminals in the various agent states?

A. Yes, they are.

Q. In answer to question 24, page 4, you say that the construction of refineries in some areas near our former markets, the use of pipe lines, and certain other factors provided sources of supply near many of our customers and was destructive of the trade connections. Now, that was back in 1926 or about. What pipe lines, additional pipe lines, were constructed by your competitors about that time or used by your competitors?

A. This was subsequent to 1926 this emergency arose. I believe we mentioned that the peak of our business had been reached in 1926. Subsequently these lines and refineries were constructed and barge lines were placed in operation.

Q. What pipe lines did you have reference to?

A. There were no pipe lines in 1926. The first pipe lines that we—that entered our picture in that area were, of course, the Great Lakes from Borger, Texas, to Iowa, Minnesota, and Illinois, and later the Phillips Petroleum Company lines.

Q. Well, what parts of Iowa and Minnesota and Illinois [fol. 392] did this first pipe line reach?

A. The Great Lakes Pipe Line has terminals at Kansas City, Missouri, the big part—Kansas City, Kansas, Council Bluffs, Iowa, Des Moines, Iowa, Coralville, Iowa, St. Paul Minnesota, and Chicago, Illinois.

Q. Was that a products line?

A. It was a products line, yes.

Q. Carry any crude oil at all?

A. No. No crude oil.

Q. When was that put in service, you think?

A. I don't recall the year. I believe it was 1932.

Q. Now, you spoke of another pipe line which had an effect upon your business. What was that?

A. There was no other pipe line in that immediate area. The Phillips Petroleum Company followed the Great Lakes; yes.

Q. What was the course of the Phillips Petroleum?

A. Its initial terminal was at Borger, Texas, passed through the southern part of Kansas, with a terminal at Wichita, a terminal at Kansas City, Kansas, Jefferson City, Missouri, and St. Louis.

Q. By what means of transportation did the competing products carried originally by its lines reach the area which your company had formerly been serving through trucks and tank cars?

A. The Great Lakes Pipe Line, the members of which [fol. 393] largely delivered their products by tank car. However, some of these refiners did deliver by transport truck.

Q. All these lines were further to the east of the course subsequently followed by the Champlin products line when it was built; were they not?

A. Their main lines. However, the spur to Omaha was adjacent to and in the heart of one of our best marketing territories.

Q. And your line, then, when it was laid out was located to the west of all of these lines and to the west of their most west-*westerly most* terminals; was it not?

A. Yes.

Q. In answer to question 27 you speak of requirements in the way of change of the quality of your gasoline with the change of seasons as being one of the reasons that your pipe line should—or could not be adequately or success-

fully operated unless it was entirely within the control — your company and carried only products of your company. Now, those changes were necessary, were they not, prior to the construction of your line at the time when your products had to reach their markets through tank trucks and cars?

A. That demand was not so pronounced prior to the construction of the pipe line. Mixtures of very light casing head or natural gasoline were made to meet this demand for this lower initial boiling point. In many instances the jobbers did the blending themselves. However, the need for the lower initial boiling point had been [fol. 394] present for some time. However, the demand began to increase materially about the time we constructed this line. In other words, I may add that a number of the jobbers, in fact, the majority in the north base their quality on the lower initial boiling point and high gravity material. By "Lower initial boiling point," I mean that this gasoline will vaporize at lower temperatures, thereby providing a gasoline which will burn at lower temperatures.

Q. And it was not so pronounced or so necessary as it was after you had built your line?

A. That is true.

Q. You stated, in answer to question 29, your company found it necessary to fix prices, or made it a practice of fixing prices, with relation to the delivered prices at which gasoline could be procured from your competitors.

A. Yes.

Q. That has been a condition which has been present before you built the pipe line, present whether or not the transportation from the refinery is by a pipe line or other means; is it not?

A. The price at destination to the consumer has been based for many years on the market known as the tank wagon market, which is made up of the base price at the refinery plus the margin that the jobber is allowed in his laid-in costs, and that is the reason for the decimals in which you see prices posted such as 18.2, 18.3, but incorporated in that price is the margin which we in the [fol. 395] industry refer to as a fair or liberal margin for the jobber, therefore, it was necessary for us to take that into consideration when we constructed the line to insure that our jobbers at all points would have a comparable delivered price giving them a margin.

Q. But that necessity has existed before as well as after the construction of your pipe line; has it not?

A. It has, yes. It was interrupted. As I stated in the previous answer here, these refiners near the destination at which our jobbers are located, in other words, they secured their supplies there, resulting in our loss of business.

Q. And the construction of the pipe line which would give you a more economical transportation enabled you to recover that business which you had lost; did it not?

A. It at least made the material available and intercepted the flow or placed the material in nearer proximity to our customers' plants and made it more desirable.

Q. At an aggregate cost of production and movement to terminals within the states at a less aggregate cost than previously had been the case; did it not?

A. Perhaps in some cases.

Q. Did it—as a rule, did it not—wasn't that the general effect of the construction of the pipe line?

A. Well, no. The effect, for example, at Hutchinson for the jobbers in Colorado and Missouri, it resulted in a [fol. 396] shorter haul for them, that is true, but without the differential the cost was thrown out of the window when the differentials were eliminated to Hutchinson for Colorado and Missouri destinations.

Q. The result, however, was that it did enable you to meet this reduced competition—reduced price competition at those points at a more economical figure to your company; did it not?

A. Yes, it was our life-saver.

Q. It was. Your competitors make their deliveries or their—the deliveries of your competitors' gasoline are accomplished by truck or tank car from the pipe line terminals of those two pipe lines that you have heretofore mentioned?

A. No. The Great Lakes make their deliveries exclusively by tank car; the Phillips by tank car or transport.

Q. From——

A. From their terminals.

Q. From their terminals?

A. That is right.

Q. All of which terminals are further to the east than your line?

A. However, extend into our territory. Our line and their line serve the same territories towards the west.

Q: To points west of your line there is a greater tank or truck-tank haul than from the distributing points on your line?

A. Until recently there was, but with construction of [fol. 397] refineries in Denver, for example, that has materially reduced the truck transportation in Kansas or Oklahoma points. There are refineries in Denver—three—from which gasoline is transported by truck and tank car towards the east.

Q. That competition, however, is distinct and different than that you meet from the Mississippi Valley refiners; is it not?

A. No. No. We have that same situation in Nebraska with refineries, at Scottsbluff and Berea and Hemingford. They are small, but we have had them nevertheless.

Q. Is the volume of products produced by those local refineries equal with that which is supplied by your pipe line?

A. No, the volume isn't. However, in this industry one car load of merchandise will affect a very wide area.

Q. So far as price is concerned?

A. So far as price is concerned, or availability.

Q. The Champlin Company produces what—approximately what proportion of its own crude oil that goes into its refinery?

A. I couldn't answer that question intelligently right now, but I doubt if it is more than 10 per cent. Mr. Leverton could answer that question better than I could at the present time.

Q. It does buy a considerable amount?

A. Considerable, yes.

Q. Is all of the gasoline which moves through your products line—and by "gasoline" I mean all products that you [fol. 398] transport through that line—produced by the Champlin Company's refinery?

A. Yes, sir; every drop of it.

Q. You don't take in any products that are produced by any other refinery?

A. No, sir.

Q. And I believe you stated it is all owned by the Champlin Company?

A. That is true.

Q. You do carry some products through that line, though for other oil companies; do you not?

A. No. We have made sales to other oil companies from our storage at the various terminals.

Q. What relation is there, if any, between those sales of those products and the crude oil received from these other companies?

A. None whatever. I doubt very much if we have ever received any oil from the companies that we have sold gasoline to. It has no bearing on it at all.

Q. You have sold to the Tidewater?

A. That is right.

Q. And what other oil companies, as distinguished from jobbers?

A. The Tidewater and the National Refining Company, the Pure Oil Company, the Derby Oil Company, all of [fol. 399] them being produced in refineries. That is, the refiners—that is, the refiners that we made sales to from the pipe line.

Q. Does the Champlin Company receive any crude from any of those companies?

A. I am quite sure the answer is no. I doubt very much if we do. Now, I would like to have Mr. Leverton support that, if I could, because I don't see the crude purchase.

Exam. Kelley: Just off the record.

(Discussion off the record.)

By Mr. Thomas:

Q. What proportion of the products moving through your line are delivered to their ultimate destination by the tank trucks owned by your company, approximately?

A. By our own company? We only have five, our own trucks, and they are located at Rock Rapids, Iowa, and the percentage is very small, but I couldn't tell you just what that percentage is now. It is very small compared to the total.

Q. Those deliveries are to jobbers; are they?

A. To jobbers and to our own bulk plants.

Q. What was the last expression, your own——

A. Our own bulk plants. They are located in Iowa and southern Minnesota.

Q. Well, the Champlin Company also owns and operates several stations where gasoline is distributed to the ultimate consumer; does it not?

A. That is right, yes.

[fol. 400] Q. And I imagine the distribution—or, rather, transportation from your pipe line terminals to those stations is also accomplished by your——

A. That is the delivery to our bulk plant, and from that to the service station by tank wagon.

Q. I see. The service stations are operated by the Champlin Company itself?

A. They are owned by the Champlin Company, but practically all of them are leased out.

Q. Leased out?

A. Yes; to local men that we refer to as factors or lessees.

Q. You do own some that the company itself operates?

A. Yes. Very few that we operate ourselves.

Q. Now, in connection with some of these exhibits indicating sales by the Champlin Company to purchasers, you speak of the sale being f. o. b. at the terminal in the particular state. You mean by that, do you not, that the sale—that the purchaser takes charge of the product at the loading rack at that terminal?

A. Yes.

Q. The prices, however, are based upon the—I mean the prices, however, are made up by considering transportation costs to the point of ultimate destination; are they?

A. In our case our first consideration was the posted tank wagon price in the various areas which, of course, [fol. 401] contains a transportation item; that is, the tank wagon price does.

Q. And your differentials are made up by an intricate calculation of those transportation costs?

A. Solely for this reason: We take the through rate——

Q. Well, your answer would be yes?

A. Yes.

Q. Then your explanation. I didn't want to stop your explanation. I just wanted to get a definite answer first.

A. I just wanted to explain from our viewpoint it is not intricate, but every destination requires its own differential.

Exa n. Kelley: Following along that line of questioning, your bills on here include the final price and final payment

for a car, for instance, of gasoline which moves beyond your terminal by tank car. Who pays the freight on that?

The Witness: The consignee. The customer pays the freight.

Exam. Kelley: Is that freight included in your bill?

The Witness: No.

Exam. Kelley: Is it included in your price?

The Witness: It is freight collect at the terminal. No, sir. The differential is the only item. The product—the tax, if it is a taxable product—and the tax is included in the invoice, but the freight beyond the terminal is charged to the railroad. There are instances where the customer asks us to prepay the freight and charge it to him, but that would be a favor to him. He receives the merchandise f. o. b. [fol. 402] terminal, and whether it is by transport truck or tank car, he assumes the freight from there.

Exam. Kelley: You have some contracts in here where you bill the whole transaction in one item.

The Witness: That is where it was delivered in our own transport truck.

Exam. Kelley: That is the only case——

The Witness: That is the only case, yes.

Exam. Kelley: —where you include the transportation charges?

The Witness: We make a flat delivered price on deliveries in our own trucks.

Exam. Kelley: Do you make a separate price in there——

The Witness: No separate charge, no.

Exam. Kelley: Can that charge be distinguished, though, from the price that you charge your other customers who take delivery otherwise?

The Witness: Yes, it could, because it carries a differential and the tax—it can be broken down into the various factors.

Exam. Kelley: Do you have a standard rate per mile or any other figures that you use when your own trucks are used for final transportation?

The Witness: No. We use the rate beyond the terminal as a yardstick in equalizing——

[fol. 403] Exam. Kelley: In any event?

The Witness: —unless there has been a change made due to some competitive condition.

By Mr. Thomas:

Q. But even where the delivery from your pipe line terminal to the ultimate destination of a truckload of oil is not made by one of your trucks, an estimated cost of that is embodied in the differential, however, which affects the price; is it not?

A. The delivery beyond the terminal?

Q. Yes.

A. No.

Q. I mean when it is delivered at the terminal physically but which is carried by a common carrier truck or by the purchaser's truck to some ultimate destination, the price you charge is affected by an allowance for transportation from the terminal to that ultimate destination?

A. We never compute the through rate in invoicing the customer. We merely add the differential which is the difference between—normally between the through rate and the rate beyond the terminal. We never show or anticipate an allowance in any event.

Q. But it has that effect; doesn't it?

A. If he can haul—and frequently they do—and show a profit there, of course, our hands are off of that. We base the price at the terminal, and as our contract reads, the [fol. 404] delivery from the terminal is optional by tank car or truck.

Q. The price is the same?

A. Yes.

Q. But that delivery does include making an allowance for tank car from the terminal to the ultimate destination; does it not?

A. Yes. He is allowed the rail rate, unless there has been some adjustment made for some competitive reason, and we have many of those in the state of Nebraska.

Mr. Thomas: I think that is all I have to ask him.

(Discussion off the record.)

Exam. Kelley: Let us get back on the record.

Will you explain your Exhibit M-5 in detail, as to what the separate items making up the total of $699.49 includes?

The Witness: See, what was that question or answer number?

Mr. Glasser: He is asking about Exhibit M.

Mr. Thomas: M-5.

Exam. Kelley: No. 30 there.

Mr. Glasser: M, page 5.

Exam. Kelley: 84 is your question number.

Mr. Thomas: Farmers Union Cooperative.

Mr. Glasser: What exhibit number are you asking about?

Mr. Thomas: M-5.

Mr. Glasser: All right. Turn to M-5, Leo.

The Witness: Yes.

Mr. Glasser: Now, the Examiner asked you a question.

[fol. 405] Exam. Kelley: Read that question for him, Mr. Reporter, so we will have it straight.

(Question of the Examiner read.)

The Witness: The first item is the invoice or base price of the gasoline f. o. b. Group 3. The second item is the federal tax applying at the source on the basis of 1½ cents per gallon, a total item of 124——

Exam. Kelley: What kind of a federal tax is that?

The Witness: It is a federal tax on gasoline.

Exam. Kelley: It is not a transportation tax?

The Witness: No, sir. It is the national federal tax on all grades of gasoline, 1½ cents per gallon. The third and last item is referred to as the differential of 1 cent per gallon, an item of $81.10, and is the differential applied by our company, on the same basis at which refineries near the destinations had this difference—or had this item, rather, which is the difference between the through rate from the point of origin to destination and the rate from the terminal or storage at which the material was received by the jobber.

Exam. Kelley: The rate at the terminal? What terminal do you mean?

The Witness: Superior, Nebraska, in this case.

Exam. Kelley: You mean the rate by freight, by railroad?

The Witness: By railroad freight, the normal difference between the through rate and the rate beyond as applied by [fol. 406] the railroads.

Exam. Kelley: Then this $81.10 represents transportation cost to the ultimate consumer in addition to his cost from the pipe line terminal?

The Witness: Yes.

Exam. Kelley: He pays that, you say, directly to the railroad?

The Witness: No; he doesn't pay that.

Exam. Kelley: He pays the cost beyond the railroad?

The Witness: That is true.

Exam. Kelley: And this $81.10 represents cost to the consumer to the terminal?

The Witness: Yes.

Exam. Kelley: It is what you call a differential?

The Witness: Differential.

Exam. Kelley: But it is what you get from your destination in Group 3 points to Superior, if that is the Superior terminal?

The Witness: That is the Superior terminal, yes. That would include the handling and all other items that go into the movement——

Exam. Kelley: It is the total charge you make for transporting gasoline from your refinery to your terminal at Superior?

The Witness: That is the total charge, yes.

[fol. 407] Exam. Kelley: That is what I wanted the record to show clearly, just what this item was, and what it represented.

Is that all?

Mr. Thomas: I think that is all.

Mr. Glasser: I would like to ask him a couple of questions.

Redirect examination.

By Mr. Glasser:

Q. The item that the Examiner has just been discussing with you represents the difference between the value of the product at the terminal, regardless of what the items are that go to make it up on a competitive basis; isn't that correct?

A. That is correct.

Q. In other words, using Skelley's refinery at Augusta, Kansas, and assuming that the purchaser would drive his truck down to Skelley's Refinery and haul his purchase to the same destination, he would pay the same price; would he not?

A. Yes.

Q. In other words, there would be no distinction made——

A. No. I beg your pardon. The answer in this case: At

Eldorado, he would pay less than this at Eldorado because he would have a different distance to go.

Q. Yes. But the differential represents, in the last analysis, nothing more nor less than putting the gas on the terminal at the market value at the terminal?

A. That is true, in relation to the value at destination.

[fol. 408] Q. If some other refiner was furnishing the customer with the gasoline at the terminal point, he would have to have in the sale of his product a sum equal to the amount that is indicated there as the differential; would he not, and deliver it there by tank car?

A. That is true. It is indicated by the practice of many years. Where a refinery is located just as we would be located at Superior, he would get this much more for his gasoline.

Q. Well, to concretely illustrate a sale out of the Sugar Creek Refinery in Missouri, for instance, to a user in Kansas City, a distance of but 8 miles, if the purchaser drives his truck out the 8 miles and gets the gasoline he pays on Oklahoma Group 3 refiners' prices, the Group 3 price for the gasoline; doesn't he?

A. I have on one exhibit here——

Q. Yes or no?

A. Yes.

Exam. Kelley: Well, let us get a little more concrete examples. If the witness has an exhibit, let us see it.

Mr. Glasser: You ruled I shouldn't read it.

Mr. Thomas: Which one?

Mr. Glasser: It is the Bailey Oil Company.

The Witness: It is the Bailey Oil Company at Kansas City.

Mr. Glasser: I was interrupted when I was reading it.

Exam. Kelley: You were interrupted just to save time; [fol. 409] that is all. It is in the record as much as any of the rest of it.

Mr. Glasser: It is quite important too.

The Witness: It is page 18.

By Mr. Glasser:

Q. Now, that is the Standard of Indiana transaction, is it not, Mr. Snyder?

A. Yes. This material is manufactured in the Standard Oil Company's Sugar Creek Refinery 9 miles east of Kansas City.

Q. Did that purchaser pay the Group 3 price?

A. He did in this case.

Q. Did he pay the Group 3 rate to Kansas City?

A. He did, at .01680 per gallon.

Q. That was not any charge for transportation; was it? That was not a charge for transportation; was it?

A. The item is listed here as freight.

Q. But the customer paid what it would have cost to have had the gasoline shipped from Tulsa, for instance, to Kansas City, plus the Oklahoma Group 3 refiner's price?

A. That is true.

Q. And that is customary in the industry in order that the price be maintained at a level at all points; is that right?

A. That is right.

Q. Now, assuming on the transaction that the examiner asked you about that the charge of $81 had not been made, then the product would have been sold below the market [fol. 410] value; would it not?

A. At that point.

Exam. Kelley: We just want to get the facts about this $81, and it does represent the cost of transportation.

Mr. Glasser: Upon the contrary, it does not, because it represents what it would have cost him to buy that gasoline from any manufacturer at that point.

Exam. Kelley: It compensates the Champlin Refining Company for transporting it to Superior; does it not?

Mr. Glasser: No, sir; it does not.

Exam. Kelley: Let the witness answer. *Let the witness answer.* He has already said that it is the freight charge of the Champlin Refining Company.

Mr. Glasser: That is what I was——

Exam. Kelley: If it includes anything else, let us have it specifically set out in the record.

The Witness: It is true the item does come to the Champlin Refining Company at $81.10.

Exam. Kelley: It is compensation for transporting the gasoline from your refinery to Superior and includes compensation for any cost that has been entailed in that transportation? I know that it is an adjustment of the through rate, but it still includes your compensation for transportation; is that right?

The Witness: Yes, sir. That is the way the item appears.

[fol. 411] Exam. Kelley: Is that all you have?

Mr. Glasser: No, it isn't. I would like to ask the witness some questions.

The Witness: However, I would like to put this in, if you would let me interrupt you, with your permission.

Exam. Kelley: Go ahead.

The Witness: I would like to say that primarily the market at destination rules the differentials.

Exam. Kelley: That is understood.

The Witness: And it may and it has in the state of Nebraska, to probably more points that we serve than otherwise, forced a change in our idea of differentials to meet that condition there.

Exam. Kelley: That is created by truck competition, is it not, in Nebraska?

The Witness: Principally.

Exam. Kelley: There is a great deal of competition there now?

The Witness: Principally, where the man owns the truck and the merchandise too.

Mr. Glasser: Now, may I continue my examination?

Exam. Kelley: Yes. Go ahead.

Mr. Glasser: Read my last question for me.

(Question of Mr. Glasser and answer thereto read.)

By Mr. Glasser:

Q. Now, Mr. Snyder, the effect of the charge that is made [fol. 412] by the application of the differential is merely to maintain the price at which gasoline is sold by competitors at the point indicated; isn't that right?

A. That is what I have always considered it.

Q. Well, yes or no?

A. Yes. Yes.

Q. And does the Champlin Company have anything in the world to do with fixing that amount other than to see that it is properly calculated and applied?

A. No.

Q. Do you ever bill to any of these customers any freight charge or any handling charge?

A. No.

Q. You give them a charge based upon an f.o.b. figure at the point where they pick the product up in their own truck?

A. Yes.

Q. And all other competitors do the same thing?

A. As far as I know, they do. I wouldn't say all of them, but all I have ever contacted do.

Q. Well, they either use the differential method or an equalization method or something that keeps them on the market——

A. That is true.

Q. —without giving a rebate or giving a deduction below the market price?

Now, referring to the question Mr. Thomas asked you, [fol. 413] will you name for me, please, the refineries that you can think of in the state of Kansas and their locations with reference to the Great Lakes Pipe Line?

A. You mean that are competitive with the Great Lakes Pipe Line?

Q. I want all of the refineries in the state of Kansas and their locations with reference to the Great Lakes Pipe Line.

A. That are hooked up with the Great Lakes Pipe Line?

Q. I want to locate them for the record on the question of east and west business. Give us their locations, where they are with relation to the Phillips Pipe Line and our pipe line.

A. The Kanotex Refining Company. Do you want the name of the refinery and its location?

Q. I want the name of the re-ingery and its location.

A. The Kanotex Refining Company, Arkansas City, Kansas.

Q. Just a moment. Does it have a connection with any of these pipe lines?

A. No.

Q. All right.

Exam. Kelley: That answer would go for all of these refineries.

Mr. Glasser: Not necessarily. The Great Lakes is a common carrier and will haul anybody's gasoline that will ask them to do so.

Exam. Kelley: Yes, but it doesn't haul for any of these [fol. 414] other refineries. It is not connected with their lines.

Mr. Glasser: I would like to have it in the record. That is why I am asking.

A. The Standard Oil of Kansas at Neodesha; the National Refining Company and the Sinclair Refining Company at

Coffeyville; the Vickers Petroleum Company at Potwin; the Eldorado Refining Company at Eldorado; the Derby Oil Company at Wichita; the Bay Petroleum at McPherson; and the Globe Oil and Refining Company at McPherson. Now, this does not include any of the Great Lakes refineries. Do you want them?

Q. I want all them in Kansas.

A. The Skelley Oil Company at Eldorado connected with the Great Lakes; the Barico, commonly known as the Barnsdall, at Wichita, Kansas, and that is the complete list.

Q. Now, outside of Skelley, are any of them connected with the Great Lakes Line other than——

A. Skelley and Barnsdall.

Q. Now, are any of them connected with the Phillips line?

A. No refineries in that area connected with it.

Q. There is a refinery at Augusta; isn't there?

A. Yes. I omitted that. White Eagle Oil and Refining Company at Augusta, Kansas.

Q. Do they have a pipe line?

A. Yes.

Q. Where does it go to and where does it end?

[fol. 415] A. Extends from Augusta, Kansas, northeast to Topeka, east of Kansas City, Kansas, the branch line leaving their main line between—midway between Topeka and Kansas City; progresses north to Omaha, Nebraska; the final terminal, with a final terminal at Omaha, Sioux City, Iowa, and final destination at Sioux Falls, South Dakota.

Q. Now, does the Great Lakes line traverse the state of Kansas?

A. It does.

Q. Can you give us approximately the route that it follows?

A. It enters the state of Kansas north of the town of Barnsdall, where it has a connection with the Barnsdall Refinery, and its main line passes north and east through Paola, Kansas, with a terminal at Kansas City, Kansas, and has a branch or gathering line connected with the Skelley Oil Company at Eldorado. And you want it beyond there?

Q. I would like to know where it terminates at?

A. A terminal at Kansas City, Kansas, Des Moines, Iowa, Omaha, Nebraska—or Council Bluffs, Iowa, Coralville, Iowa, St. Paul, Minnesota, and Chicago, Illinois.

Mr. Glasser: That is all I care to ask him.

Redirect examination.

By Mr. Thomas:

Q. How long have those lines which you have just referred to been operating? Some of them have just been completed; have they not?

[fol. 416] A. No. The White Eagle line is the most recently constructed line.

Exam. Kelley: Which line is that? That hasn't been referred to by name heretofore.

The Witness: That is the extension I just mentioned, from Augusta, Kansas, Topeka, and Kansas City, Kansas. The Great Lakes, are you referring to that?

By Mr. Thomas:

Q. Yes.

A. I believe their construction started in 1932; and the Phillips probably two years later.

Q. But this White Eagle line, when was it put in service, as far as you know?

A. That was put in about 1936 as far as Kansas City, Kansas, by way of Topeka, and just recently extended to Sioux Falls, South Dakota.

Q. Oh, yes. The extension, then, is to Sioux Falls?

A. Just completed. They formerly operated barges from Kansas City, Kansas, terminals to Sioux City, Iowa.

Q. Now, does the Standard of Indiana also have a line?

A. From Sugar Creek, Missouri, 9 miles east of Kansas City. The line has been in operation some time, probably a year, to Council Bluffs, Iowa. It has recently been extended to Sioux Falls, South Dakota.

Q. You say that the item $81.10, which is a plus differential shown on Exhibit M-5 is not a transportation charge. [fol. 417] As a matter of fact, the Champlin Refining Company's billheads bear a notation that transportation charges are always net cash. What would that refer to?

A. Wherever we prepaid a load. For example, if we prepay a carload from Enid and the freight was $100, we would show on the invoice a 1 per cent discount on the merchandise if paid in 10 days. We get no discount on the freight. We necessarily would want 100 per cent on the dollar from the customer. That has been on our invoices

Mr. Thomas: I am anticipating everything I have to say will be on original briefs.

Mr. Glasser: I thought so, too. What do you say we file cross briefs and waive that?

Mr. Thomas: Well, I don't want to waive that because I don't want to be precluded from filing a reply brief.

Mr. Glasser: Except that eleven days is certainly a brief time for a man who is busy.

Exam. Kelley: We will let it go at this, that the reply brief, if any, will be due on December 26. If you need any further time, apply for it.

If there is nothing further, this hearing is closed.

(Whereupon at 4:35 p. m., the hearing in the above-entitled matter was closed.)

(Here follow 2 photolithographs, side folios 423-424.)

EXHIBIT 1

1728

State Corporation Commission

STATE OF KANSAS

COMMISSIONERS

ANDREW F. SCHOEPPEL A. B. JONES
ALFRED WILLIAMS

To all to Whom these Presents shall Come, Greetings:

I, RICHARD B. McENTIRE, Secretary of the State Corporation Commission of the State of Kansas, do hereby certify that the following and hereto attached is a true copy of APPLICATION

In the matter of the Application of the Cimarron Valley Pipe Line Company for a Certificate of Convenience and Authority to transact the business of a Common Carrier in the State of Kansas. Crossing State of Kansas near the 98th Meridian.	DOCKET NO. 15,628

Form CD

BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

In the Matter of the Application of

the Cimarron Valley Pipe Line Company

for a Certificate of Convenience and Authority to transact the business of a

common carrier in the State of Kansas.
(Common carrier or public utility.)

Crossing State of Kansas near the 98th Meridian.
(Here describe the territory very briefly, as county, city, section, etc.)

Filed 6th day of Feb. 1935
Docket No. 15678
State Corporation Commission
State of Kansas
By [illegible] Lenson
Secretary

APPLICATION

Comes now Cimarron Valley Pipe Line Company
of Santa Fe, New Mexico and Enid, Oklahoma, a corporation
(Corporation, partnership, or individual.)
representing that it is its intention to engage in the business of constructing, maintaining and operating a pipe line for the purchase, transportation and sale of petroleum and its products, primarily gasoline,
(Type of utility and field, as gas, electric, telephone, etc.)
in Kansas, in territory described specifically below, and avers that public convenience will be thereby presented.

Description of Territory: (Include a map if territory cannot otherwise be simply described.)

Entering the State of Kansas six to ten miles east of the 98th Meridian and continuing across the State practically due north to the Nebraska-Kansas State Line.

Other Utilities of the same classification as this applicant now operating in or near the above described territory are:

NAME	ADDRESS
None	

In connection with the construction, maintenance and operation of said line it will be necessary to construct and maintain telephone and telegraph lines along the right-of-way of said pipe line for the use of the Company only.

Remarks: (Here state any other pertinent facts. If transmission lines are concerned give a reference to their bearing on the subject, including docket number if any.)

There are no like transmission lines serving the proposed territory for transportation of refined petroleum products.

X

[fol. 425] EXHIBIT 2

Docket No. 15628

Before the Corporation Commission of Kansas

——, Complainant,

vs.

——, Respondent

Transcript of Testimony

Hearing at Topeka, Kansas, February 21, 1935

— G. Grice, Reporter.

[fol. 426] Docket No. 15628

In the Matter of the Application of the CIMARRON VALLEY PIPELINE COMPANY for Certificate of Convenience and Authority to Transact the Business of a Common Carrier in the State of Kansas

Transcript of proceedings before Kansas Corporation Commission, at its offices in Topeka, Kansas, February 21st, 1935.

Chairman Hoch: We have before us the application of the Cimarron Valley Pipeline Company for a certificate of convenience and authority to transact the business of a common carrier in the State of Kansas. We will take the appearances.

H. G. McKeever, for the applicant.

Chairman Hoch: Just state in substance what this application is, and what you propose to do.

Mr. McKeever: Yes, this application is for the Cimarron Valley Pipeline Company, with its principal office at Enid, Oklahoma, however, under the laws of the State of New Mexico. It is a subsidiary company of the Champlin Refining Company. That is also a New Mexico corporation, [fol. 427] with its principal place of business in Enid, Oklahoma, and its refinery where it manufactures the refined products from petroleum, and the purpose of this application is in order that the Cimarron Valley Pipeline Company may construct a pipeline across the State of

for many years and originated in the days when we pre-paid many of our shipments for the convenience of our customers.

Q. Pre-paid them from Enid entirely to destination?

A. That is right.

Q. Do you ever pre-pay shipments from your pipe line to your final destinations?

A. I don't recall ever paying tank car freight to destination. There may be a few instances, but I don't recall.

Q. These differentials are always a plus item; are they not?

A. Yes.

Q. An addition to the base price at the refinery?

A. All invoices carry a differential item.

Q. And no competitive situation ever causes you to give a negative or a minus differential?

A. No. If we post a differential it is posted for all to that particular destination, and it is posted in our supplements.

[fol. 418] Mr. Thomas: I think that is all.

Mr. Glasser: That is all.

Exam. Kelley: The witness is excused.

(Witness excused.)

[fol. 419] Exam. Kelley: Do you have any questions of Mr. Leverton?

Mr. Glasser: I have consulted Mr. Leverton. He is not able to testify. He is in the Auditing Section. He cannot testify as to the operating end, the crude end of the business.

Mr. Thomas: I don't think that is important. I thought if he were here he could answer it.

Mr. Glasser: He couldn't answer it any more than Mr. Snyder.

Exam. Kelley: Do you have any further witnesses at this time?

Mr. Glasser: No. That is all we have.

Mr. Thomas: The Commission, Mr. Examiner, would like to introduce in evidence the Commission orders relative to the valuation of pipe lines.

Exam. Kelley: You mean the particular orders served on this company, or the form of the order?

Mr. Thomas: I think it is the form of order we should put in rather than the—I understand the papers that were

served on them included typical examples and things like that, which make quite a large packet, and I think that the Commission orders should be sufficient to show just what the valuation of this pipe line would amount to.

Exam. Kelley: Do you have those papers here?

Mr. Thomas: I haven't them here, but they could be gotten together very shortly, and I ask leave to file them [fol. 420] within, say, five days.

Exam. Kelley: That may be done.

Mr. Thomas: The question arises, would you like a copy of those?

Mr. Glasser: Well, if we have them already we don't need them again.

Mr. Thomas: I am told you were, and this letter from the Commission——

Mr. Glasser: You sent us orders 26 and 27, I believe. Is that what you wanted to offer in evidence? We have no objection.

Mr. Thomas: We sent you copies.

Mr. Glasser: No. If it is orders 26 and 27, you sent them.

Exam. Kelley: Do you wish to brief this case?

Mr. Glasser: Yes, sir, we do.

Exam. Kelley: Your briefs will be due on December 11 for both sides, and reply brief on December 26.

I will call attention of counsel to the provision of Section 1 of the Act to regulate commerce which makes all pipe line companies such as this common carriers. Treat that question in your briefs.

Mr. Glasser: We want to ask the Commission for an opportunity to argue the case—and is it proper to make that request now, or do we make that in the brief?

[fols. 421-422] Exam. Kelley: Make that in your brief.

Mr. Glasser: That is what we thought. December 26 is the day after Christmas, and that is a difficult time for us to have to be writing briefs and getting them right on the eve of Christmas.

Exam. Kelley: The rule is 15 days after the other brief is in. How much time do you want?

Mr. Glasser: Well, my difficulty is that I have some other cases that I have got to try. I have got to be in Court, and I need as much time as the Commission can give us on our side, and I presume that counsel is in the same position.

the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the seal of the State Corporation Commission.

Done at the City of Topeka, this 3rd day of October A.D. 19[illegible] 1

Richard B. McFarland

Secretary, State Corporation Commission.

Remarks: (Here state any other pertinent facts. If transmission lines are concerned give a reference to their bearing on the subject, including docket number if any.)

There are no like transmission lines serving the proposed territory for transportation of refined petroleum products.

X

Wherefore, Applicant prays that the Commission issue to Cimarron Valley Pipe Line Company a Certificate of Convenience and Authority to transact the business of a common carrier in the State of Kansas as above set forth.
(Common carrier or public utility)

Dated at Enid, Oklahoma, this 19th day of February, 1935

Cimarron Valley Pipe Line Company (Applicant).

(Signed) E. G. Wilmoth, Secretary-Treasurer
(Signature and title of officer.)

State of Kansas, County of Shawnee, ss.

E. G. Wilmoth, of lawful age, being duly sworn upon oath, deposes and says that he is Secretary-Treasurer of the within named applicant, and that he has read the above and foregoing application, and that the statements therein contained are true.

(Signed) E. G. Wilmoth

Statements are Sworn to before me this 20th day of February, 1935

(Signed) Pearl Norris
Notary Public.

My commission expires Sept. 2, 1937

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Kansas for the purpose of primarily carrying gasoline, the proposed route to be within a few miles of the 98th Meridian, which runs near the City of Hutchinson, and clear across the state, eventually, the purpose being to carry the gasoline to the customers of the Champlin Refining Company in their trade territory which the company already serves by its own tank car line.

Chairman Hoch: I suggest that you put Mr. Wilmoth on the stand and develop this on sworn testimony.

E. G. WILMOTH called as a witness, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. McKeever:

Q. State your name.
A. E. G. Wilmoth.
Q. Where do you live, Mr. Wilmoth?
A. Enid.
Q. Are you connected with the Cimarron Valley Pipe-[fol. 428] line Company, the applicant here?
A. I am Secretary.
Q. How long have you been connected with that company?
A. Since its organization.
Q. When was it organized?
A. April 19th, 1930.
Q. And are you incorporated in the State of New Mexico?
A. Yes, sir.
Q. Prior to that were you connected with the Champlin Refining Company interests?
A. I was.
Q. And for how many years have you been connected with those interests?
A. Sixteen years.
Q. Have you a financial statement to file with your application here?
A. I have a certified copy of the financial statement which was filed with the Secretary of State to secure permission to do business within the state.
Q. Of Kansas?
A. Yes.

Q. With the Secretary of State if where you filed the financial statement, and you have now a certified copy of [fol. 429] that to file in this office?

A. I do.

Q. Will you hand that to the report- and let him mark it and make it a part of the record?

Paper referred to marked Exhibit 1, by the reporter.

Now will you state to the Commission the purpose for which you are asking this certificate?

A. The Cimarron Valley Pipeline handled products of the Champlin Refining Company, and this line is to be built to more conveniently service customers in their trade territory.

Q. State in the record where the proposed line is to enter the State of Kansas, and where you are to build it.

A. Somewhat east, probably six to ten miles of the 98th Meridian, and straight north to the intersection of the Kansas-Nebraska line.

Chairman Hoch: Give us approximately the towns, so we can locate it.

A. Near Hutchinson.

Mr. McKeever: Go to Hutchinson, and go north and south straight from Hutchinson, that will be a starting point, I don't know what town near the border, it would enter. What is your nearest town at the Border?

[fol. 430] A. Well, there is none. It is west of Caldwell.

Q. Between Caldwell and Kiowa, isn't it?

A. Yes.

Q. How many miles of pipeline does your company have in Oklahoma?

A. Between four and five hundred miles.

Q. You serve the principal fields, and also act as a common carrier besides carrying the products for this refinery, is that correct?

A. That is correct.

Q. Reaching especially to the Seminole and Oklahoma City fields, and the Noble and Garfield and Kay County fields?

A. Yes, sir.

Q. And also Okmulgee field?

A. Yes, sir.

Q. Does your company propose to sell any securities or any of its stock in Kansas, or any place else?

A. They do not.

Q. It is owned principally by H. H. Champlin, isn't it, originator and owner of the Champlin interests?

A. Yes, sir.

Mr. Steiger: You will file your tariffs, Mr. Wilmoth, within a reasonable time, showing the charges you will make?

[fol. 431] A. Yes, we want to comply with any regulations that are now in force or any hereafter that may be in force.

Chairman Hoch: If you are given a certificate as a common carrier you will submit yourself, of course, to the obligations which go along with being a common carrier?

A. We will, yes, sir.

Chairman Hoch: You propose to transport gasoline, principally?

A. Yes, sir.

Chairman Hoch: And you expect to accept for transportation on equal terms, such gasoline as may be tendered to you, under such reasonable rules as may be established for those tenders, do you?

A. Yes, sir, we do.

Chairman Hoch: How large a pipe line do you intend to lay?

A. Six inch.

Chairman Hoch: Six inch uniform width across the state?

A. Yes.

Mr. Steiger: Have you any idea of the approximate cost of laying that line in the State of Kansas?

A. About a million dollars, between a million and a million and a quarter dollars.

[fol. 432] Mr. Steiger: And that will be paid for as you progress across the state, the bills will be taken care of, and paid?

A. Yes, sir.

Mr. McKeever: I might make this statement, the company is prepared to pay cash for the construction of the line and completion of it.

Chairman Hoch: Do you have a certificate for this particular line in Oklahoma?

A. We do not secure certificates in Oklahoma. We gain permission from each of the counties.

Chairman Hoch: You have whatever authority you consider necessary under Oklahoma law?

A. Yes, sir.

Chairman Hoch: How about Nebraska?

A. We have not made the application yet, we expect to, immediately.

Mr. McKeever: We have sent for the blanks, and the law, to find out what we have to do. Now in Oklahoma, I will state this, we have qualified in Oklahoma, and have our principal office in Enid, of course, where the refinery is, and where we all live, and the company has constructed all of this line. We are under a different law than in Kansas. When we get permission there to transact business, then [fol. 433] we have no public convenience statute. We merely build our pipeline where we want it, and the kind of line we desire.

Chairman Hoch: I notice this application cites that in connection with the construction, maintenance and business of said line it will be necessary to construct and maintain telephone and telegraph lines along the right of way of said pipeline for the use of the company only.

A. I might explain this, it is necessary for the company to have its own telephone line to carry on the operations of the pipeline. You have to keep track of your oil hourly, and it is impracticable to try to buy that service from anyone, because it is necessary that that line follow your pipeline in case of break. We have walkers and it is necessary they get all information at once, and it is necessary that we have a telephone and telegraph line as near the right of way as possible.

Mr. McKeever: They all have them?

A. They do.

Q. Mr. Wilmoth, you are acquainted and familiar with all of the pipelines that transport petroleum and other products in Oklahoma and Kansas, aren't you, and where they are located?

[fol. 434] A. I think I am qualified.

Q. The lines outside of the gather lines, I mean, the main trunk lines?

A. Well, I have made it a point to study the lines in Kansas that transport refined products, and I think I am very well qualified as to where they are located.

Q. What lines in Kansas transport gasoline?

A. Great Lakes Pipeline Company, and Phillips Petroleum Company line.

Q. With reference to the territory they serve, where does this go, your proposed line?

A. We cross Phillips line in the south central part of Kansas, and at that point the Phillips line is running northeast and southwest. We go directly north and serve an entirely different territory. The Great Lakes line just covers the eastern part of Kansas.

Q. Is there any line in any of the communities to where your line reaches except Oklahoma markets, for Phillips, that is used for the same purpose, that is, in transporting gasoline?

A. There are none.

Chairman Hoch: Could you say in a general way how wide a strip of territory you would expect to serve across [fol. 435] Kansas, how far back from this line would you say, if you can say, the territory extends that you expect this line to serve?

A. Well, Mr. Chairman, if you please, that would be impossible for me to say, because we intend to have a terminal to ship gasoline out in tank cars, may be going to Denver.

Chairman Hoch: You expect to have various delivery points along this line in Kansas?

A. Only at Hutchinson.

Chairman Hoch: You don't expect to have any other delivery point except at Hutchinson?

A. No, that is our intention now.

Mr. McKeever: I would not want to commit the company to that entirely, but that is our present intention.

Chairman Hoch: And from Hutchinson, or other points you might establish for distribution, you expect to distribute in tank cars from this pipe?

A. Well, or trucks, either.

Chairman Hoch: Railroad tank cars or trucks?

A. Yes.

Mr. McKeever: Mr. Wilmoth, there will be tank cars over which you have no control, that is, that don't belong

to you, that will come to the station to purchase gasoline, independent dealers, and haulers?

[fol. 436] A. We hope that will be true.

Mr. McKeever: I say that would be done by that kind of trade?

A. Yes.

Mr. McKeever: People come to the station to purchase their gasoline in their own tank cars, and have a distributing line, we have that in Oklahoma, and some of the gasoline that comes to Kansas is from our refinery, boys come down there in trucks and bring it here?

Chairman Hoch: Can you give us a comparative statement as to the cost of transporting gasoline by pipeline and distributing it with tank cars on the rail or by truck?

A. Well, I don't think I am qualified to do that. I am satisfied it can be done more conveniently and cheaper by pipeline.

Chairman Hoch: You say it will be considerably cheaper in your opinion, but considering the amount invested in maintenance, and everything of that sort, to transport gasoline to Hutchinson, Kansas, by this pipeline than it would be to transport it in any way you know of?

A. I think it would.

Chairman Hoch: You are projecting this pipeline on the grounds it is the cheaper method of transportation, [fol. 437] one of the grounds, cheaper method of transportation?

A. Yes, sir.

Chairman Hoch: And a more convenient method of transportation?

A. More convenient.

Chairman Hoch: Do you know anything about the experience of gasoline pipelines as to dangers of explosion?

A. Well, in the early day, when they were first constructed they were afraid of them. I have not been able to figure out just why, but the public in general thought there was some danger, but the experience of the Great Lakes Pipeline Company and Phillips Petroleum Company, who have been in operation four or five years has been that that is all scare. There is no danger. I went into that pretty much with Mr. Moreland, who is Vice President and General Manager of the Great Lakes, they have the largest gasoline pipeline system in the United

States, and he rather laughed at me, when I asked that particular question.

Chairman Hoch: Does the company carry, or expect to carry indemnity insurance, or will there be anything to protect the public against any hazards other than the general credit of this company?

A. Well, that has not been a custom to carry anything like that, however, I think our company is financially re- [fol. 438] sponsible, which is shown by our financial statement, for any liability which they might have on that line.

Chairman Hoch: The pipe is welded, I presume?

A. It is welded, yes, sir.

Mr. McKeever: The pipeline, as I understand, it will be the purpose not to enter the thickly populated sections, and where we go, say to Hutchinson, it will not be within the city limits, the station we would establish. It will be outside the city limits, and we will go through no town, but stay in the country with the line.

The Witness: That is true, but it is not on account of danger. I would not be afraid to do it on account of danger, but that is more for our convenience.

Mr. McKeever: No, that is right.

Chairman Hoch: This matter will be called to the attention of the whole commission, they will have the record, of course.

[fol. 439] EXHIBIT 3

IN THE DISTRICT COURT OF —— COUNTY, STATE OF KANSAS

No. ——

THE CIMARRON VALLEY PIPE LINE COMPANY, a Corporation,

Plaintiff,

vs.

—— ——, Defendants

PETITION

Your petitioner, the Cimarron Valley Pipe Line Company, respectfully represents that it is a corporation, organized, existing and doing business under the laws of the

State of New Mexico and duly and legally authorized to transact business within the State of Kansas, and to maintain, construct and operate, as a common carrier, pipe lines and telephone and telegraph lines for the use of said company, to be used in connection with the transportation of petroleum, gas, gasoline, and petroleum products, and said corporation has the power of eminent domain within the State of Kansas.

That your petitioner desires to and is engaged in the construction of a pipe line between the points of Enid, Oklahoma, north, near the 98th Meridian and across the State of Kansas, to Superior, Nebraska.

That your petitioner desires to locate its said pipe line and telephone line under, over, through and across a certain tract or tracts of land in —— County, Kansas, being owned, described and bounded as follows:

[fol. 440] Your petitioner further states that it is necessary for the lawful corporate purposes of your petitioner that it obtain an easement upon the above described tract or tracts of land for the construction, maintenance and operation of its pipe line across said premises, the pipe to be buried below any plow depth, and an additional easement in connection with the maintenance of said pipe line to construct a telephone and telegraph line for the use of said company on the property line between the public highway and defendants property.

Your petitioner further represents that it has made a diligent effort in good faith to procure by purchase from said defendants a right of way over and across the land above described and said defendants refused and still refuse to grant to said plaintiff said right of way necessary for the construction of the pipe line and telephone line over and across the above described property.

Wherefore, plaintiff prays that the court, under the authority of Sec. 26-101 and 102, Revised Statutes of Kansas, 1923, appoint three disinterested householders and residents of said county as appraisers who shall be selected by the Judge of said court, who are not interested in any like question, to view, lay off, and inspect the property hereinbefore described and consider the injury which the said defendants as the owners of said land have sustained by reason of the taking of said easement, and assess the damages which said owners will sustain by such appropria-

tion of this land, to make and file their report, and that this plaintiff may thereupon be authorized to enter upon said real property for its use as hereinbefore described, upon the payment of such damages as may be awarded.

—— ——, Attorneys for Plaintiff.

STATE OF KANSAS,
—— County, ss.:

——, being first duly sworn, upon oath, deposes and says: That he is the agent and attorney of the Cimarron Valley Pipe Line Company; that he is duly authorized to make this affidavit; that he has read the petition above set out, and knows all the allegations contained therein are true.

—— ——.

Subscribed and sworn to before me this —— day of ——, 1935. —— ——, Notary Public. My Commission Expires: —— ——.

[fol. 441] IN THE DISTRICT COURT OF —— COUNTY, STATE OF KANSAS

No. ——

THE CIMARRON VALLEY PIPE LINE COMPANY, a Corporation, Plaintiff,

vs.

—— ——, Defendants

NOTICE TO CONDEMN PIPE LINE AND TELEPHONE RIGHT OF WAY

To Whom It May Concern:

Public Notice is hereby given that the Cimarron Valley Pipe Line Company, a corporation, organized under the laws of the State of New Mexico, and with authority to transact business as a common carrier and to exercise the right of eminent domain in the States of Oklahoma and Kansas, has surveyed and located its pipe line to be built from Enid, Oklahoma, north, across Oklahoma and the State of Kansas, to Superior, Nebraska, and that it is necessary for the lawful corporate purposes of said company

that it obtain a pipe line and telephone easement across the tract or tracts of land situated in —— County, Kansas, and described as follows:

[fol. 442] IN THE DISTRICT COURT OF —— COUNTY, STATE OF KANSAS

No. ——

THE CIMARRON VALLEY PIPE LINE COMPANY, a Corporation, Plaintiff,

vs.

—— ——, Defendants

ORDER APPOINTING APPRAISERS

Now on this —— day of ——, 1935, the same being one of the regular judicial days of a term of this Court, this matter comes on for hearing upon the application of the Cimarron Valley Pipe Line Company for the appointment of appraisers for the purpose of condemning and appraising certain property herein sought to be condemned by the said Cimarron Valley Pipe Line Company and the Court being fully advised in the premises, finds that said Cimarron Valley Pipe Line Company has the power of eminent domain within the State of Kansas; that the following described property is necessary for the lawful corporate purposes of the said plaintiff; and that the said plaintiff is properly proceeding under the provisions of Sections 26-101 and 102 of the Revised Statutes of the State of Kansas, 1923, for condemnation of property for the purpose of the construction, maintenance and operation of its pipe line and telephone and telegraph lines across the property of the land owners therein described, to-wit:

[fol. 443] said right of way entering and leaving said property as described in plaintiff's petition, for the purpose of the transportation of petroleum, gas, gasoline and petroleum products, and that three appraisers who shall be householders and residents of said county should be appointed for the purpose of said proceedings, as prescribed by the aforesaid statutes of the State of Kansas.

It Is Therefore Ordered, Adjudged and Decreed that —— ——, —— ——, and —— ——, being householders and

residents of the County of ——, State of Kansas, should be and they are hereby appointed appraisers by this Court with authority to proceed forthwith after having taken oath to honestly and faithfully discharge their duties as such appraisers, to act according to law in such cases provided,

It Is Further Ordered that the aforesaid appraisers give the above named defendants —— days notice by —— said notice to state the time and place when and where said appraisement will be made.

—— ——, Judge of the District Court of —— County, Kansas.

Oath of Appraisers

STATE OF KANSAS,
County of ——, ss.:

—— ——, —— ——, and —— ——, disinterested householders and residents of —— County, Kansas, being duly sworn according to law, do hereby solemnly swear that they will well and truthfully appraise the lands and easements described in the foregoing order, for the uses and purposes therein expressed.

—— ——, —— ——, —— ——.

Subscribed and sworn to before me this —— day of ——, 1935. —— ——, Notary Public. My Commission Expires —— ——.

[fol. 444] The undersigned appraisers having been duly appointed by the Judge of the District Court of —— County, Kansas, to proceed with the appraisement of the aforesaid property will on the —— day of ——, 1935, at the hour of —— o'clock A. M., meet on the aforesaid property and proceed to appraise the same, at which time and place you may be present and heard if you so desire, and shall immediately thereafter make their written report of their appraisement to the Judge of said court and file same in the office of the Clerk of the District Court of —— County, Kansas.

—— ——, —— ——, —— ——, Appraisers.

[fol. 445] IN THE DISTRICT COURT OF OTTAWA COUNTY, STATE OF KANSAS

No. 6571

THE CIMARRON VALLEY PIPE LINE COMPANY, a Corporation,

Plaintiff,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY, Defendant

DISMISSAL

Whereas, the above named defendant voluntarily conveyed to the plaintiff the easement as described in plaintiff's petition,

Now, Therefore, the plaintiff, Cimarron Valley Pipe Line Company does hereby dismiss the above entitled action.

Cimarron Valley Pipe Line Company. By Scarritt & Champlin, its Attorneys.

I, Ray W. Jones, Clerk of the dist. Court of the 30th Judicial district, Ottawa County, State of Kansas, do hereby certify this to be a true and exact copy of Order of Dismissal as the same remains of record of the above entitled cases now on file in this office.

Ray W. Jones.

[fol. 446] IN THE DISTRICT COURT OF OTTAWA COUNTY, STATE OF KANSAS

No. 6569

THE CIMARRON VALLEY PIPE LINE COMPANY, a Corporation,

Plaintiff,

vs.

JOHN B. BOYLE, Defendant

DISMISSAL

Whereas, the above named defendant voluntarily conveyed to the plaintiff the easement as described in plaintiff's petition,

Now, Therefore, the plaintiff, Cimarron Valley Pipe Line Company does hereby dismiss the above entitled action.

Cimarron Valley Pipe Line Company, by Scarritt & Champlin, Its Attorneys.

I, Ray W. Jones, Clerk of the dist. Court of the 30th Judicial district, Ottawa County, State of Kansas, do hereby certify this to be a true and exact copy of Order of Dismissal as the same remains of record of the above entitled cases now on file in this office.

Ray W. Jones.

[fol. 447] IN THE DISTRICT COURT OF REPUBLIC COUNTY, STATE OF KANSAS

No. 9180

THE CIMARRON VALLEY PIPE LINE COMPANY, a Corporation, Plaintiff.

vs.

WILLIAM M. POWELL, GRACE A. DAVIDSON and ORBA DAY, Defendants

ORDER OF DISMISSAL

Now on this 5th day of July, 1935, the same being one of the regular judicial days of a term of this court, it appearing to this court from the pleadings filed herein that the plaintiff, Cimarron Valley Pipe Line Company, is not a corporation which has the right of eminent domain under the statutes of the State of Kansas and that the proceedings herein should be dismissed for this reason.

It Is Therefore Ordered, Adjudged and Decreed that the suit pending herein for condemnation of the lands described in plaintiff's petition should be dismissed for lack of jurisdiction by reason of the fact that the plaintiff is not a corporation which has the right of eminent domain and the same hereby is dismissed.

Tom Kennett, Judge.

STATE OF KANSAS,
County of Republic, ss.:

I, Wm. R. Goodwin, Clerk of District Court, within and for the aforenamed State and County, hereby certify the above instrument to be a full true copy of the Order of Dismissal in the above nsmed cause of action as the same remains on file in this office.

Witness my hand and the seal of said Court affixed this 23rd day of August 1935.

Wm. R. Goodwin, Clerk of District Court of Republic County, Kansas.

[fol. 448] IN THE DISTRICT COURT OF RENO COUNTY, KANSAS

No. 22354

THE CIMARRON VALLEY PIPE LINE COMPANY, a Corporation, Plaintiff,

vs.

EMMETT HUTTON, CHARLEY W. OSWALD, and RUDOLPH J. STUCKEY, Defendants

JOURNAL ENTRY

Now on this 1st day of April, 1935, the same being a regular day of the April, 1935 Term of this Court, this cause comes on upon a Motion of the defendants Emmett Hutton and Charley W. Oswald, said Motion being duly verified, setting forth that said action was filed by an agent of plaintiff's who is not duly authorized to practice in this Court.

The Court after due consideration and being fully advised in the premises finds that said action should be dismissed.

It Is Therefore Considered, Ordered and Adjudged that this cause of action be dismissed and that the order made Saturday, March 30th, should be and the same is hereby set aside, under and by which three appraisers were duly appointed. Costs $6.80.

J. G. Somers, Judge.

Approved: Oswald & Fontron, Attorneys for Defendants, Emmett Hutton and Charley W. Oswald; McKeever, Stewart & McKeever, Attys. for Cimarron Pipe Line Co.
Filed: April 1st, 1935.
Recorded: Journal Entry record 59, page 823.

[fol. 449] State of Kansas,
Ninth Judicial District, Reno County, ss.:

I, Walter Mead, Clerk of the District Court of the Ninth Judicial District of the State of Kansas, sitting within and for the county aforesaid, do hereby certify that the above and foregoing is a true, full and complete copy of Journal Entry in the therein entitled case, as the same remains on file and of record in my office.

Witness my hand and the seal of said Court affixed at my office in Hutchinson this 16th day of August, 1935. Walter Mead, Clerk of the District Court of Reno County.

By —— ——, Deputy.

[fol. 450] Certified Copy of Journal Entry in Case No. 22354. The Cimarron Valley Pipe Line Company, a Corporation vs. Emmett Hutton, et al. Filed April 1st, 1935. Walter Mead, Clerk of the District Court. Copy for —— ——, Attorneys for —— ——.

(Here follow 2 Photolithographs, side folios 451-452.)

EXHIBIT 4

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That CIMARRON VALLEY PIPE LINE COMPANY, a Corporation, party of the first part, for and in consideration of the sum of One and no/100 ($1.00) DOLLARS, and other valuable considerations, lawful money of the United States, to it in hand paid, at or before the delivery of these presents by CHAMPLIN REFINING COMPANY, a Corporation, party of the second part, the receipt whereof is hereby acknowledged, has BARGAINED AND SOLD, and by these presents does sell and transfer and deliver unto the said party of the second part, the following described personal property, to-wit:

> A certain gasoline pipe line extending from the refinery of the Champlin Refining Company at Enid, Oklahoma, to Hutchinson, Kansas, and thence to Superior, Nebraska; together with all pumps, pump stations, receiving stations, loading racks, tanks, and all machinery, equipment and appliances of every kind and nature used in connection therewith.

TO HAVE AND TO HOLD THE SAME unto the said party of the second part, its successors and assigns forever. And said party of the first part does for itself and its successors and assigns, covenant and agree to and with the said party of the second part, its successors and assigns, to WARRANT AND DEFEND the title to said property, goods and chattels hereby sold, unto the said party of the second part, its successors and assigns, against all and every person and persons whomsoever.

WITNESS our hands and seals this 10th day of June, 1936.

ATTEST:

CIMARRON VALLEY PIPE LINE COMPANY,

E. E. Dilworth
Secretary

By R. W. Champlin
President.

STATE OF OKLAHOMA)
) ss.
COUNTY OF GARFIELD)

Before me, the undersigned, a Notary Public in and for said County and State, on this 10th day of June, 1935, personally appeared H. H. Champlin, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

My Commission Expires
Feb 4 1937.

D. Peterson
Notary Public.

280A

17 June 35.

Janice Carpenter

17 June 35

Janice Carpenter

[fol.453] EXHIBIT 5.

ASSIGNMENT OF RIGHT OF WAY

Whereas, On the — day of —, 1935, a certain right of way conveyance was made by —, grantor —, to Cimarron Valley Pipe Line Company, grantee, covering the following described land in the County of —, and State of —, to-wit:

which conveyance is recorded in the records of said County in Book — Page —, and

Whereas, The said conveyance and all rights thereunder or incident thereto are now owned by Cimarron Valley Pipe Line Company.

Now, Therefore, For and in consideration of One Dollar, and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned does hereby bargain, sell, transfer, assign and convey unto Champlin Refining Company, a New Mexico Corporation, its successors and assigns, all of its right, title and interest in and to the said right of way conveyance, and all rights thereunder.

Witness Our Hands and seals this 10th day of June, 1935.

Cimarron Valley Pipe Line Company, by —— ——,
Vice-President.

Attest:

—— ——, Secretary.

STATE OF OKLAHOMA,
County of Garfield, ss:

Before me, the undersigned, a Notary Public in and for said County and State, on this 10th day of June, 1935, personally appeared Joe N. Champlin, to me known to be the identical person who subscribed the name of the maker thereof, Cimarron Valley Pipe Line Company, to the foregoing instrument as its Vice-President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

—— ——, Notary Public.

My Commission Expires —— ——.

[fol. 454]

EXHIBIT 6

Champlin Refining Company

First 6 months 1941

(1) Barrels of all products delivered at Enid refinery into pipe line first six months 1941	1,173,594
(2) Barrels of all products delivered by pipe line first six months 1941 into storage tanks at:	
(a) Hutchinson, Kansas terminal	261,952
(b) Superior, Nebraska	499,897
(c) Rock Rapids, Iowa	409,730
(3) Deliveries from terminal were:	
A. From Hutchinson, Kansas	
I. By Rail:—	
Kansas destinations—barrels	7,336
Missouri destinations—barrels	290
II. By Truck:—	
Colorado destinations—barrels	78,891
Kansas destinations—barrels	202,743
Missouri destinations—barrels	23,775
Nebraska destinations—barrels	1,388
Total	314,423
B. From Superior, Nebraska	
I. By Rail:—	
Nebraska destinations—barrels	18,612
II. By Truck:—	
S. Dakota destinations—barrels	45,250
Colorado destinations—barrels	9,634
Iowa destinations—barrels	29,591
Kansas destinations—barrels	454
Minnesota destinations—barrels	20,089
Nebraska destinations—barrels	375,993
Wyoming destinations—barrels	994
Total	500,617
C. From Rock Rapids, Iowa	
I. By Rail:—	
Iowa destinations—barrels	34,591
Minnesota destinations—barrels	54,314
North Dakota destinations—barrels	9,609
South Dakota destinations—barrels	4,789
II. By Truck:—	
Iowa destinations—barrels	82,604
Minnesota destinations—barrels	196,293
North Dakota destinations—barrels	9,206
South Dakota destinations—barrels	35,827
Total	427,293

[fol. 455] EXHIBIT 7

Total Sales First Six Months 1941

From Information Supplied By the Tax Collection Officials (as shown)
Of The Respective States
Compared to Deliveries From Champlin Pipe Line Territory

Colorado (Department Of Revenue)			
Gasoline—Gallons	123,621,156		
Kerosene—Gallons	3,757,214		
Distillate—Gallons	13,331,564		
Total Gallons	140,709,934		
Total Barrels 42 gallons		3,350,236	
Champlin—By Truck From Hutchinson	78,891		
By Truck From Superior	9,634		
Total Barrels	88,525		2.6%
Kansas (Commission Of Revenue And Taxation)			
Gasoline—Barrels—50 Gallons	5,436,640		
Kerosene—Barrels 50 Gallons	361,991		
Total Barrels 50 Gallons	5,798,631		
Total Barrels 42 Gallons		6,903,132	
Champlin—By Rail From Hutchinson	7,336		
—By Truck From Hutchinson	202,743		
—By Truck From Superior	454		
Total Barrels	210,533		3%
Nebraska (Department of Agriculture & Inspection)			
Gasoline—Gallons	124,459,680		
Kerosene—Gallons	12,690,667		
Tractor Fuel—Gallons	38,244,815		
Miscellaneous Gallons	28,282,060		
Total Gallons	203,677,222		
Total Barrels—42 Gallons		4,849,458	
Champlin—By Truck From Hutchinson	1,388		
—By Rail From Superior	18,612		
—By Truck From Superior	375,993		
Total Barrels	395,993		8%
Iowa (State Treasurer)			
Gasoline—Gallons	274,354,544		
Kerosene—Gallons	18,541,054		
Tractor Fuel & Distillate Not Available			
Total Gallons	292,895,598		
Total Barrels—42 Gallons		6,973,705	
Champlin—By Truck From Superior	29,591		
—By Rail From Rock Rapids	34,591		
—By Truck From Rock Rapids	82,664		
Total Barrels	146,846		2%

EXHIBIT 7—Continued

[fol. 456]

Total Sales First Six Months 1941
From Information Supplied By The Tax Collection Officials (as shown)
Of The Respective States
Compared to Deliveries From Champlin Pipe Line Territory

Minnesota (Department of Taxation)		
Gasoline—Gallons	289,799,725	
Kerosene—Gallons	13,547,646	
Distillate—Gallons	111,439,369	
Tractor Fuel—Gallons	9,010,895	
Total Gallons	423,797,635	
Total Barrels—42 Gallons		10,090,420
Champlin—By Truck From Superior	20,089	
—By Rail From Rock Rapids	54,314	
—By Truck From Rock Rapids	196,293	
Total Barrels	270,696	2.7%
South Dakota (Treasury Department)		
Gasoline—Gallons	74,024,199	
Kerosene—Gallons	5,604,834	
Distillate—Gallons	18,306,276	
Tractor Fuel—Gallons	3,864,223	
Total Gallons	101,799,532	
Total Barrels 42 Gallons		2,423,798
Champlin—By Truck From Superior	45,250	
—By Rail From Rock Rapids	4,789	
—By Truck From Rock Rapids	35,827	
Total Barrels	85,866	3.5%
Total for 6 States Served From Champlin Terminals		34,590,749
Total From Champlin Terminals	1,198,459	3.5%

NOTE: Champlin terminals also supplies 24,065 barrels for Missouri, 18,815 barrels for North Dakota and 994 barrels for Wyoming.

[fol. 457]

EXHIBIT 8

Champlin Refining Company
Superior, Nebraska Terminal Differentials

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Abie	.01188		
Abbott	.01617		
Abdal	.01980		
Adams	.00891		
Agnew	.01122		
Ainsworth	.00594		
Albion	.01188	.01	9- 1-36
Albright	.00660		
Alda	.01683		
Alden	.00594		
Alexandria	.01650		
Alfalfa Center	.01716		
Allen	.00792	.00528	11- 9-39
Alliance	.00792	.00594	2-25-37
Alma	.01848	.01125	8-17-36
Alvo	.00990		
Ames	.00990		
Amherst	.01716	.0115	1 -7-38
Anan	.01782	.01225	4-22-37
Andrews	.00594		
Angora	.00660		
Angus	.01815	.0150	10-28-36
Anoka	.00462		
Anselma	.01386	.01136	9- 5-36
Ansley	.01485	.0110	3- 2-37
Antioch	.00726		
Arabia	.00594		
Arapahoe	.01848	.0125	12-19-38
		.01125	9-30-39
Arcadia	.01353	.0110	9-14-36
		.0095	2-12-41
Arbor	.01089		
Archer	.01716	.01125	9- 6-39
Arlington	.00726		
Armour	.01254		
Arnold	.01386	.01136	7-14-36
Ashby	.00594		
Ashland	.00957		
Ashton	.01518	.0110	5- 1-39
Asylum	.01122		
Atkinson	.01056	.00924	10-21-40
Atkins Siding	.00594		
Atlanta	.01650		
Auburn	.00726		
Aurora	.0 .50	.0120	6-30-36
Austin	.01650		
Avery	.00660		
Avoca	.00792		
Axtell	.01584	.0115	11- 3-36
Ayr	.01782		
Arthur	.00594 (Original posting 4-12-38)		
Badger	.01353		
Baileyvue	.00594		
Bancroft	.00528		
Barneston	.01353		
Barney	.00660		

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Bartley	.01782	.0125	9-16-36
Barton	.00594		
Bassett	.00594		
Battle Creek	.01122		
Bayard	.00594		
Bay State	.00990		
[fol. 458]			
Beatrice	.01353	.01	1-13-41
Beaver City	.01947	.01125	8-22-35
Beaver Crossing	.01617	.0125	8-14-36
Bee	.01386		
Beemer	.00924		
Beet Spur	.01914		
Belden	.00858		
Belfast	.01485		
Belgrade	.01287		
Bellevue	.00660		
Bell Wood	.01320	.01004	9-22-39
Belmar	.01254		
Belmont	.00594		
Belvidere	.01650	.0125	5-25-36
Benedict	.01584	.01125	5- 7-36
Benkelman	.01386	.01	2-16-36
Bennett	.01023		
Bennington	.00660		
Berea	.00594		
Berks	.01386		
Bertrand	.01518	.01125	11- 3-36
Berwyn	.01518		
Bethany Heights	.01089		
Beverly	.01452		
Big Springs	.00594		
Bingham	.00594		
Birdsell	.00726		
Birdwood	.01320		
Bixby	.01683		
Bladen	.01914	.01004	6- 3-38
Blaine	.01749		
Blair	.00660		
Bloomfield	.00792		
Bloomington	.01947	.01125	9- 9-36
Blue Hill	.01881	.01004	6-24-36
Blue Springs	.01353		
Boelus	.01551	.01125	3-28-40
Bonner	.00726		
Boone	.01254		
Bordeaux	.00594		
Bostwick	.01980	.01625	6-16-36
Bradish	.01188		
Bradshaw	.01650	.0125	11-16-36
Brady Island	.01386	.01	9-14-39
Brainard	.01254	.01125	12-10-36
		.01004	6-23-38
Brandon	.01188		
Brayton	.01551		
Breslaw	.00990		
Brickton	.01749		
Bridgeport	.00594		
Bristow	.00726		

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Broadwater	.00792	.00594	5-18-37
Brock	.00726		
Brockhoff	.00594		
Broken Bow	.01386	.0110	11-26-36
Brownville	.00726		
Brule	.00594		
Bruning	.01716		
Bruno	.01221		
Brunswick	.00924		
Buda	.01683		
Burchard	.01122		
Burr	.00990		
Burress	.01683		
Burwell	.01221	.0110	11-26-36
[fol. 459]			
Buzzard Roost Ranch	.01617		
Byron	.01749		
Barada	.00726 (Original posting 7-3-36)		
Butte	.00462 (Original posting 12-9-35)		
Bushnell	.005		
Bartlett	.0110		
Cadams	.01848	.0150	12-11-39
Cairo	.01617	.01125	4-15-38
Callaway	.01452	.01136	7-29-36
Cambridge	.01782	.0125	8-14-36
Campbell	.01881		
Carleton	.01716	.0125	4- 1-36
Carlisle	.01815		
Carlos	.01122		
Carroll	.00858		
Carter	.01749		
Cedar Bluff	.00891		
Cedar Creek	.00792		
Cedar Rapids	.01287	.01004	7-10-41
Central City	.01518	.01125	2-24-36
Ceresco	.01023		
Chadron	.00594		
Chaleo	.00792		
Chapman	.01617		
Charleston	.01650		
Cheneys	.01056		
Chester	.01683	.01004	2- 4-36
Chimney Rock	.00594		
Clarks	.01386	.01136	3-14-36
Clarkson	.00990		
Clatonia	.01254		
Clay Center	.01749	.01225	8-17-36
Clayton	.01485		
Clearwater	.01122		
Clinton	.00594		
Coburn			
Cody	.00594		
Coleridge	.00726		
Collegeview	.01122		
College View Siding	.01122		
Colon	.00891		
Columbus	.01254	.01004	5-16-36
Comstock	.01287	.011	9- 5-36

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Concord	.00726		
Cook	.00891		
Copenhagan	.00924		
Cordova	.01617		
Cornlea	.01188		
Cortland	.01122		
Cotesfield	.01749	.0110	11-26-36
Covert	.00594		
Cowles	.01881		
Cozad	.01551	.01	5-19-36
Crab Orchard	.01122		
Craig	.00726		
Crawford	.00594		
Creighton	.00990		
Creston	.00990		
Crete	.01485	.0125	7-20-36
Crofton	.00660		
Crookston	.00594		
Crowell	.00990		
Culbertson	.01452	.01	2-10-36
[fol. 460]			
Cullom	.00726		
Curtis	.01518	.0125	10- 6-36
Cushing	.01716	.0110	11-12-36
Center	.00792 (Original posting 9-24-40)		
Chappell	.00594 (Original posting 2-18-39)		
Chambers	.0099 (Original posting 10-20-36)		
Dakota City	.00462		
Dale	.00726		
Dalton	.00528		
Danbury	.01683		
Dannebrog	.01584	.0110	8-13-36
Darr	.01617		
Davenport	.01749	.0125	7-14-37
Davey	.01056		
David City	.01254	.01004	1- 2-37
Dawson	.00891		
Daykin	.01617	.0130	8-12-37
Delphi Spur	.01848		
Denman	.01815		
Denton	.01386		
Deshler	.01716	.0125	10- 7-36
De Soto	.00660		
Deweese	.01848		
De Witt	.01254		
Dexter	.00594		
Dickens	.01320	.01	5-19-39
Diller	.01485	.01125	1-18-41
Dixon	.00792		
Dodge	.00990		
Doniphan	.01683	.0120	6-30-36
Dorchester	.01584		
Du Bois	.00957		
Douglas	.01023		
Dublin	.01716		
Duncan	.01254	.01004	1-13-37
Dunbar	.00726		
Dunning	.01386	.01136	9- 3-36

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Durant	.01386		
Dwight	.01386	.01125	9-13-37
Dix	.005		
Decatur	.0066 (Original posting 2-3-41)		
Eagle	.01023		
Eddyville	.01584		
Edgar	.01782	.01225	4-12-37
Edholm	.01122		
Edison	.01980		
Elba	.01782	.0110	11-26-36
Elberson	.00726		
Eldorado	.01650	.01225	8-17-36
Elgin	.01056		
Eli	.00594		
Elk Creek	.00990		
Elkhorn	.00660		
Ellis	.01452		
Ellsworth	.00594		
Elm Creek	.01584	.0115	1-20-37
Elmwood	.00957		
Elsie	.01254	.0110	7- 5-37
		.0075	1-26-38
Elwood	.01716	.0125	6- 8-36
Elyria	.01419		
Emerald	.01254		
Emerson	.00462		
[fol. 461]			
Emmet	.01023		
Enders	.01386	.0100	9-19-36
Endicott	.01485		
Enola	.00990		
Ericson	.01419	.0110	1-11-37
Ernst	.01452		
Eustis	.01650	.0125	9-24-36
Everson	.01782		
Ewing	.01056	.00924	6- 8-38
Exeter	.01683	.0125	8-10-36
Fairbury	.01485	.01225	3- 4-36
Fairfield	.01782	.01225	6-20-36
Fairmont	.01683	.0125	3-13-37
Falls City	.00726		
Farmer	.01749		
Farnam	.01617	.0125	8-14-36
Farwell	.01584	.0110	7-26-37
Filley	.01122		
Finley	.00924		
Firth	.00990		
Flickville	.01749		
Foley	.01386		
Fordyce	.00726		
Fort Calhoun	.00660		
Fort Crook	.00660		
Ft. Robinson	.00594		
Foster	.01122		
Franklin	.01980	.01125	2-28-36
Fremont	.00792		
Friend	.01617	.0125	8-17-36

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Fullerton	.01254	.01004	3-18-36
Funk	.01584	.0115	3- 3-37
Ft. George	.00858		
Florence	.0066		
Gandy	.01452	.01125	6- 8-38
Gannett	.01320		
Gardiner	.01254		
Garland	.01485		
Garrison	.01254		
Geneva	.01716	.0125	9-30-37
		.01	1-17-41
Genoa	.01254	.01004	9- 3-40
Gering	.00594		
Gibbon	.01782	.0115	6-26-39
Gilead	.01617	.01064	3-15-37
Gilmore	.00660		
Gilmore Jct.	.00660		
Giltner	.01683	.0120	4-28-38
Gladstone	.01617		
Glen	.00594		
Glenburnie	.01518		
Glen Rock	.00726		
Glenvil	.01782	.01225	10-21-36
Glenwood Park	.01848		
Goehner	.01584		
Goodwin	.00792		
Gordon	.00594		
Gothenburg	.01452	.01	8-18-36

[fol. 462]

Graf	.00957		
Grafton	.01683		
Grainton	.01254		
Grand Island	.01650	.01125	3-24-36
Grant	.01254	.01	6-18-36
		.0075	6- 5-37
Greeley Center	.01518	.0110	4-19-37
Green's Switch	.00792		
Greenwood	.01023		
Gresham	.01485	.0125	8-12-36
Gretna	.00858		
Guide Rock	.01947	.01625	2- 4-35
Hadar	.01254	.00924	8-13-35
Haig	.00594		
Haigler	.01320	.01	2-21-39
Hallam	.01254		
Halloran	.01749		
Halsey	.01254		
Hamlet	.01386		
Hampton	.01551	.0120	8-16-36
Hanlon	.01056		
Hansen	.01749		
Harbine	.01452	.01125	4- 3-37
Hardy	.01782	.01625	6-11-36
Harrison	.00594		
Hartington	.00726		
Harvard	.01683	.01225	3- 5-36
Haspur	.01683		

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Hastings	.01782	.01225	3- 5-36
Havelock	.01122		
Havens	.01353	.01125	5- 3-41
Hayland	.01815		
Hay Point	.00924		
Hay Springs	.00594		
Hazard	.01551	.0115	5-23-38
Heartwell	.01782		
Heber	.01386		
Hebron	.01716	.01064	7- 4-36
Hecla	.00594		
Helvey	.01617	.0130	9- 8-36
Hemingford	.00594		
Henderson	.01650	.0125	8-13-36
Hendley	.01815	.01125	2-22-36
Henry	.00660		
Herman	.00792		
Hershey	.01320	.007	9-23-40
Hickman	.01122		
Hildreth	.01782	.01225	3- 5-36
		.0115	7- 7-37
Hindrey	.01386		
Hoag	.01254		
Holbrook	.01848	.0125	9-19-36
Holdrege	.01584	.0115	1-29-37
Hollinger	.02046		
Holmesville	.01353		
Holstein	.01881	.01225	3-11-36
		.0115	3-26-38
Homer	.00528		
Hooper	.00858		
Horace	.01485		
Hordville	.01386	.01125	7-12-39
Horn	.00594		
Hoskins	.01221		
Houston	.01584		

[fol. 463]

Howe	.00726		
Howells	.00990		
Hubbard	.00462		
Hubbell	.01650	.0115	9-30-37
Humboldt	.00957		
Humphrey	.00990		
Huntley	.01683	.01125	9-12-36
Hyannis	.00594		
Harrisburg	.00594 (Original posting 4-14-37)		
Imperial	.01320	.01	2-10-36
Inavale	.02046	.01125	7- 1-36
Indianola	.01685	.0125	9-16-36
Ingham	.01518		
Ingleside	.01749		
Inland	.01749	.01225	10-21-36
Inman	.00924		
Irvington	.00660		
Irwin	.00594		
Ithaca	.00891		

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Jacinto	00504		
Jackson	01089		
Jamaica	01419		
Joder	00504		
Jansen	01485	01125	12-29-36
Johnson	00891		
Johnstown	00504		
Josselyn	01683		
Julian	00660	005	2-26-41
Juniata	01749	01225	12-10-36
K&O Jct	01551		
Kearney	01683	01	8-15-41
Keene	01683	01125	8- 4-36
Keith	01320		
Keithley Spur	01980		
Kelly	00504		
Kenesaw	01815		
Kennard	00660		
Kent	01320		
Kenyon	01551		
Kesterson	01584		
Keystone	01386		
Kilgore	00528		
Kinney	01353		
Knox	01716		
Korty	00594		
Kramer	01386		
Krider	01452		
Kuhn	00924		
Kimball	005		
Lawn	00660		
Lakeside	00660		
Lambert	01155		

[fol. 464]

Lancaster	01122		
Lanham	01353		
La Platte	00660		
Laurel	00792		
Lawrence	01881	0150	9-25-36
Leahey	01485		
Leat	00594		
Lebanon	01716	01125	3-26-40
Leigh	00990		
Lemoyne	01254		
Le Roy	01914		
Leshara	00792		
Lester	01947		
Letan	00726		
Level	01782		
Lewellen	01188	00504	5-27-37
Lewiston	01122		
Lexington	01683	01	5-19-36
Liberty	01254		
Lincoln	01122		
Lindsay	01188	01	3- 6-40
Linscott	01386		
Linwood	01155		

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Lisco	.00990	.00594	2-18-39
Litchfield	.01617	.0115	5-23-38
Lockwood	.01617		
Lodi	.01518		
Logan	.01452		
Loma	.01254		
Lonax	.01617		
Long Pine	.00594		
Loomis	.01650	.01125	11- 3-36
Loretto	.01188		
Lorton	.00726		
Louisville	.00858		
Loup City	.01485	.0110	6-29-36
Lowell	.01782		
Lushton	.01650	.0125	1-15-37
Lutherville	.01056		
Lyman	.00594		
Lyman Spur	.00792		
Lynch	.00792		
Lyons	.00726		
Lytle	.00990		
Lamar	.0075 (Original posting 5-7-41)		
Lodgepole	.005		
Lorenzo	.005		
McAlpine	.01419		
McCandless	.00726		
McCook	.01584	.0125	9- 4-36
		.0110	7- 6-37
McCool Jct.	.01584	.0125	8- 4-36
McGrew	.00594		
McLean	.00990		
Madison	.00990		
Madrid	.01254	.01	6- 8-36
Magnet	.00792		
Malcolm	.01386		
Malmo	.01122		
Manley	.00858		
Mansfield	.00594		
Mapps	.01716		
Marion	.01650		
[fol. 465]			
Marquette	.01617	.0120	4-13-37
Marsland	.00594		
Martell	.01122		
Martin	.01320		
Martland	.01782		
Mascot	.01650		
Mason	.01551	.0110	6- 4-38
Max	.01386		
Maxwell	.01320	.01	10- 6-36
Mayberry	.01089		
Maywood	.01452	.0125	10- 6-36
Mead	.00726		
Meadow Grove	.01056	.00924	8-13-36
Megeath	.00594		
Melbeta	.00594		
Melia	.00891		
Memphis	.00891		

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Mercer	.00726		
Merchiston	.01320		
Merna	.01386	.01136	12-23-36
Merriman	.00594		
Midway	.01650		
Milford	.01485	.01122	5-28-36
Millard	.00660		
Milldale	.01452		
Miller	.01683	.0115	1-26-37
Millerton	.01254		
Milligan	.01617		
Mill Spur	.01782		
Minden	.01683	.01125	2-22-36
Minersville	.00660		
Mitchell	.00594		
Moorefield	.01452		
Monroe	.01221		
Monowi	.00858		
Morrill	.00594		
Morse Bluff	.01089	.009	7- 5-40
Mt. Claire	.01947		
Mullen	.00660		
Munson	.00990		
Murdock	.00957		
Muriel	.01782		
Murphy	.01650		
Murray	.00660		
Mynard	.00660		
Martinsburg	.00792 (Original posting 9-24-40)		
Maskell	.00792 (Original posting 9-24-40)		
Nacora	.00462		
Nantasket	.01485		
Naponee	.01947	.01125	4- 1-37
Nashville	.00660		
Natick	.01122		
Nebraska City	.00660	.005	2-26-41
Nehawka	.00726		
Neligh	.00990		
Nelson	.01815	.0150	8-24-36
Nemaha City	.00726		
Nenzel	.00594		
Nevens	.01452		
Neward	.01683		
Newmans Grove	.01188	.01	8- 2-37
Newmarch	.01881		

[fol. 486]

Newport	.00924		
Nichols	.01254		
Nickerson	.00924		
Nimburg	.01122		
Niobrara	.00858		
Nonpariel	.00594		
Nora	.01815	.01625	7-28-36
Norfolk	.00924		
Norman	.01815		
North Auburn	.00660		
North Bend	.00990		
North Loup	.01683	.0110	5-16-36

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
North Platte	.01320	.01	6-17-36
Northport	.00594		
Norway	.00858		
Naper	.00462 (Original posting 6-4-36)		
New Castle	.00792 (Original posting 4-5-39)		
Oak	.01815	.01625	10-13-36
		.0150	10- 8-37
Oakdale	.00990		
Oakland	.00726		
Oconee	.01221		
Oconto	.01518		
Octavia	.01188		
Odell	.01452	.01202	2- 4-36
		.01099	4-13-41
Odessa	.01716		
O'Fallons	.01254		
Ogallala	.00594		
Ohiowa	.01683		
Olean	.01650		
Omaha	.00660	.005	5- 9-41
O'Neill	.00924		
Ong	.01782	.0125	5-24-38
Optic	.01683		
Orchard	.00924		
Ord	.01485	.0110	11-26-36
Oreapolis	.00726		
Orella	.00594		
Orleans	.01843	.01064	2- 4-35
Osceola	.01386		
Oshkosh	.01056	.00594	5-18-37
Osmond	.00990		
Otoe	.00792		
Ouren	.00726		
Overton	.01551	.01150	5-21-36
Oxford	.01749	.01125	11- 3-38
Oxford Jct.	.01749		
Orafino	.0125 (Original posting 3-28-38)		
Paddock	.01518		
Page	.00924		
Palisade	.01386	.01	2-10-36
Palmer	.01716	.01125	3-24-36
Palmyra	.00957		
Panama	.01089		
Papillion	.00660		
Papillion Jct.	.00726		
Parks	.01386		

[fol. 467]

Paul	.00660		
Pauline	.01782		
Pawnee	.01089		
Paxton	.00594		
Peck	.00990		
Peck's Grove	.01122		
Pender	.00528		
Penn	.01122		
Perry	.01518		
Peru	.00660		

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Petersburg	.01122		
Phillips	.01650	.0120	3- 8-37
Pickrell	.01122		
Pierce	.01188	.00924	8-13-36
Pilger	.00924		
Plainview	.00990		
Platte Center	.01254	.01004	10- 1-38
Plattsmouth	.00660		
Pleasant Dale	.01386		
Pleasanton	.01551	.0115	8-11-36
Plymouth	.01353	.0125	3-18-37
Polk	.01386	.01125	8-13-36
Poole	.01650		
Powell	.01617		
Power	.01650		
Prague	.01122		
Prairie Home	.01056		
Preston	.00726		
Primrose	.01221		
Princeton	.01122		
Prosser	.01683		
Putnam	.01353		
Potter	.005		
Ponca	.00792 (Original posting 9-23-40)		
Platte Valley	.00924		
Raeville	.01122		
Ragan	.01683	.01125	9- 6-36
Ranch Spur	.00726		
Randolph	.00858		
Ravenna	.01419	.01125	4- 3-36
Raymond	.01122		
Red Cloud	.02079	.01064	2- 4-36
Redwillow	.01617		
Republican	.01881	.01125	9-19-36
Rescue	.01122		
Reynolds	.01584	.0115	4-26-37
Richfield	.00792		
Richland	.01155	.01004	6-26-39
Rising City	.01386		
River	.01683		
Riverdale	.01848		
Riverton	.02046	.01125	4- 6-39
Roca	.01122		
Rockford	.01254		
Rockville	.01683		
Rogers	.00990		
Rohrs	.00858		
Rokeby	.01122		
Rosalie	.00660		
Roscoe	.00594		
Roseland	.01881		
Rosemont	.01881		
Royal	.00924		
Ruby	.01485		
Rulo	.00660		
[fol. 468]			
Rumsey	.00726		
Rushville	.00594		

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Ruskin	.01749	.01625	7-28-36
Ruthton	.01188		
Rutland	.00594		
St. Edwards	.01320	.01070	5-16-36
		.01004	7-10-41
St. Libory	.01815	.01125	6-21-37
St. Michael	.01650		
St. Paul	.01716	.0110	3- 7-36
Sacramento	.01683		
Salem	.00858		
Saltillo	.01122		
Sanborn	.01254		
Sanburg	.01386		
Sarben	.01452		
Sargent	.01221	.0110	9- 5-36
Saronville	.01683		
Sawyer	.01683		
Schaupp	.01485		
Schimmer	.01650		
Schuyler	.01122	.01004	12-16-37
Scotia	.01716	.0110	5-16-36
Scottsbluff	.00594		
Scribner	.01056	.00792	8- 8-40
Sedan	.01782		
Seneca	.00726		
Seward	.01485	.0125	8-28-39
Seymour	.00660		
Seymour Park	.00660		
Shea	.01485		
Shelby	.01386	.01125	4-19-37
		.01004	3- 3-41
Sheldonville	.01287		
Shelton	.01683	.0115	4-18-36
Shestak	.01386		
Shickley	.01782	.01270	2-24-37
		.0125	10-15-37
		.01	1-17-41
Shippee	.01749		
Sholes	.00858		
Shubert	.00726		
Silver Creek	.01320	.0112	12-10-36
		.0107	12-31-36
Simla	.00594		
Simmonda	.01584		
Smartville	.00990		
Smithfield	.01749		
Smyrna	.01848		
Snyder	.00990		
Somerset	.01386		
South Bend	.00891		
South Minden	.01782	.01125	7-23-36
South Omaha	.00660		
South Ravenna	.01485		
South Sioux City	.00462		
Spaulding	.01155		
Spelts	.01485		
Spencer	.00528		
Sprague	.01122		

EXHIBIT 8—Continued

[fol. 469] Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Springfield	.00792		
Spring Ranch	.01782		
Stafford	.00990		
Stamford	.02046	.01125	9-22-36
Stanton	.00924		
Staplehurst	.01485		
Stapleton	.01386	.01	10- 1-38
Steele City	.01485	.01125	9-24-37
Stein	.00726		
Steinhaven	.01089		
Stella	.00726		
Sterling	.00891	.007	9-29-41
Stockham	.01650	.0125	4- 1-38
Stock Yard Siding	.01287		
Stoddard	.01716		
Stone Quarry	.01353		
Strang	.01716	.0126	12-28-36
Stratton	.01386	.01	5-10-40
Stransville	.00726		
Stromsburg	.01386	.01125	7-15-36
Stuart	.01056	.00924	10-21-40
Summer	.01617	.0115	6-24-37
Sumol	.005		
Sutherland	.00594		
Sutton	.01683	.0125	11-12-36
Syracuse	.00858		
Swanton	.01452		
Swedeburg	.00990		
Sweetwater	.01551		
Superior	.01625 (Original posting 2- 5-36)		
Stockville	.0125 (Original posting 6- 8-36)		
Surprise	.01125 (Original posting 5- 9-41)		
Steinauer	.01122 (Original posting 4-10-37)		
Sidney	.005		
Table Rock	.01023		
Talmage	.00726	.005	2-26-41
Tamora	.01485		
Tangeman	.00858		
Tarnov	.01188		
Tecumseh	.00990		
Tekamah	.00726		
Thacher	.00594		
Thayer	.01584		
Thedford	.00990		
Thompson	.01584		
Thummel	.01386		
Thurston	.00462		
Tilden	.00990		
Tobias	.01617	.0125	6-27-36
Toohey	.00594		
Touhy	.00891		
Trenton	.01452	.01	2-10-36
Trumbull	.01749	.0120	6-30-36
Turlington	.00792		
Tyson	.00792		
Taylor	.0110 (Original posting 8-13-37)		
Uehling	.00858		
Ulysses	.01386		

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Unadilla	.00891		
Union	.00726		
[fol. 470]			
University Place	.01122		
Upland	.01815	.0115	5-24-38
Utica	.01485	.0125	8-10-36
Valentine	.00594		
Valley	.00726		
Valley Home	.01782		
Valparaiso	.01122		
Vance	.00660		
Verango	.01122	.0075	6-3-37
Verdel	.00792		
Verdigre	.00924		
Verdon	.00726		
Verona	.01749		
Vesta	.01089		
Viginia	.01122		
Violet	.01122		
Vroman	.01386		
Wabash	.00891		
Waco	.01584		
Wahoo	.00891		
Wakefield	.00726		
Wallace	.01254	.0110	9-4-36
Walthill	.00660		
Walton	.01023		
Wann	.00891		
Wareham	.00858		
Warnerville	.00990		
Washington	.00660		
Waterbury	.00792		
Waterloo	.00660		
Watertown	.01683		
Wauneta	.01452	.01	2-15-36
Wausa	.00792		
Waverly	.01056		
Wayne	.00858		
Wayside	.00462		
Weeping Water	.00858		
Wellfleet	.01386		
Western	.01617		
Weston	.00891		
West Point	.00924		
Whitman	.00594		
Whitney	.00594		
Wilber	.01386	.01254	6-1-37
Wilcox	.01782	.0115	7-7-37
Williams	.01650		
Willow Island	.01518		
Willview	.00660		
Wilsonville	.01782		
Winnebago	.00594		
Winnetoon	.00990		
Winside	.01221	.00924	5-14-37
Winslow	.00858		
Wisner	.00924		

EXHIBIT 8—Continued

Destination	Original Differential Effective August 14, 1935	Differential Reduced to	Date Reduced
Wolbach	01100		
Woodcliff	.00792		
Wood Lake	.00594		
Woodlawn	.01254		
Wood Park	.00792		
Wood River	.01683	.01125	3-24-36
Wood Siding	.00660		
Woodville	.01320		

[fol. 471]

Wymore	.01353		
Wyoming	.00660		
Worms	.01125 (Original posting 5-29-37)		
Wynot	.0066 (Original posting 8- 4-37)		
White Clay	.00594 (Original posting 4-12-40)		
Yanka	.01254		
York	.01584	.0125	7-15-36
Yutan	.00792		
Zell	.01386		

[fol. 472] EXHIBIT 9

RATES EFFECTIVE JUNE 11, 1941

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Abbott Crossing	32	16	.01056	16	.01056
Ackley	32	16	.01056	16	.01056
*Ackworth	29	20	.01320	9	.00594
Acme (Howard Co.)	37	19	.01254	18	.01188
Acme	29	18	.01188	11	.00726
Adair	29	20	.01320	9	.00594
*Adams	32	33.5	.02211	1.5-	.00099-
Adaza	32	13.5	.00891	18.5	.01221
Adel	32	17.5	.01155	14.5	.00957
*Adelphi	29	18.5	.01221	10.5	.00693
*Afton	29	27.5	.01815	1.5	.00099
*Agency City	32	30.5	.02013	1.5	.00099
*Ainsworth	32	33.5	.02211	1.5-	.00099-
Akron	34	7.5	.00495	26.5	.01749
Aladdin	32	19	.01254	13	.00858
Albert City	34	9	.00594	25	.01650
*Albia	29	26	.01716	3	.00198
Albion	32	18	.01188	14	.00924
Alburnett	34	26	.01716	8	.00528
Alden	32	15.5	.01023	16.5	.01089
Alexander	34	14.5	.00957	19.5	.01287
Algona	34	13	.00858	21	.01386
Alleman	32	16.5	.01089	15.5	.01023
Allendorf	34	5.5	.00363	28.5	.01881
*Allerton	29	27.5	.01815	1.5	.00099
Allison	32	17	.01122	15	.00990
*Almont	35	38	.02508	3-	.00198-
Almoral	34	26	.01716	8	.00528
Alta	32	8	.00528	24	.01584
Alta Vista	37	19	.01254	18	.01188
Alton	34	6	.00396	28	.01848
Altoona	29	18.5	.01221	10.5	.00693
Alvord	34	5	.00330	29	.01914
Amana	32	27.5	.01815	4.5	.00297
*Amber	35	30.5	.02013	4.5	.00297
Ames	32	16	.01056	16	.01056
Anamosa	34	29	.01914	5	.00330
*Andover	35	38	.02508	3-	.00198-
Angus	32	15.5	.01023	16.5	.01089
Anita	29	20	.01320	9	.00594
Ankeny	32	17	.01122	15	.00990
Anthon	32	9.5	.00627	22.5	.01485
Aplington	32	17	.01122	15	.00990
Arcadia	32	15	.00990	17	.01122
Archer	34	5.5	.00363	28.5	.01881
*Anderson	29	20	.01320	9	.00594
*Arden	32	35	.02310	3-	.00198-
Aredale	34	16.5	.01089	17.5	.01155
Argon	32	15.5	.01023	16.5	.01089
*Argyle	29	40	.02640	11-	.00726-
Arion	32	15	.00990	17	.01122
*Arispe	29	24.5	.01617	4.5	.00297

* Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Arlington	34	24.5	.01617	9.5	.00627
Armstrong	37	9.5	.00627	27.5	.01815
Arnold	34	12.5	.00825	21.5	.01419
Arnolds Park	34	9	.00594	25	.01650
Arthur	32	14.5	.00957	17.5	.01155
Ascalon	32	21.5	.01419	10.5	.00693
*Ascot	32	15.5	.01023	16.5	.01089
Ashawa	32	17	.01122	15	.00990
Ashton	34	5.5	.00363	28.5	.01881
Aspinwall	32	16	.01056	16	.01056
Astor	32	17	.01122	15	.00990
Atalissa	32	30.5	.02013	1.5	.00099
Atkins	32	23	.01518	9	.00594
Atlantic	29	20	.01320	9	.00594
*Atwood	32	26	.01716	6	.00396
Auburn	32	13.5	.00891	18.5	.01221
[fol. 473]					
Audubon	32	20	.01320	12	.00792
Aurelia	32	7.5	.00495	24.5	.01617
Aurora	34	24.5	.01617	9.5	.00627
Austin	34	7	.00462	27	.01782
Austinville	32	16.5	.01089	15.5	.01023
*Avery	29	26	.01716	3	.00198
Avoca	29	20	.01320	9	.00594
*Avon	29	18.5	.01221	10.5	.00693
Ayrshire	34	9	.00594	25	.01650
Badger	34	12.5	.00825	21.5	.01419
Bagley	32	16.5	.01089	15.5	.01023
Bailey	37	19	.01254	18	.01188
Bakers	29	18.5	.01221	10.5	.00693
*Baldwin	35	33.5	.02211	1.5	.00099
Bancroft	37	14	.00924	23	.01518
*Bard	32	35	.02310	3-	.00198-
*Barnes City	32	29	.01914	3	.00198
*Barney	29	21.5	.01419	7.5	.00495
Barnum	32	12	.00792	20	.01320
*Bartlett	29	18.5	.01221	10.5	.00693
Bassett	34	19	.01254	15	.00990
*Batavia	32	32	.02112	-	-
Battle Creek	32	14	.00924	18	.01188
Baxter	32	18.5	.01221	13.5	.00891
Bayard	32	16.5	.01089	15.5	.01023
*Bayfield	32	35	.02310	3-	.00198-
*Beacon	29	26	.01716	3	.00198
*Beaconsfield	29	29	.01914	-	-
Beaman	32	18.5	.01221	13.5	.00891
*Bear Creek	29	30.5	.02013	1.5-	.00099-
Beaver	32	15	.00990	17	.01122
Beaver Park	32	18	.01188	14	.00924
*Beck	31	42	.02772	11-	.00726-
*Beckwith	32	33.5	.02211	1.5-	.00099-
*Bedford	29	32	.02112	3-	.00198-
*Beech	29	19.5	.01287	9.5	.00627

"*" Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Belfast	31	38	.02508	7–	.00462–
*Belknap	29	32	.02112	3–	.00198–
Belle Plaine	32	21.5	.01419	10.5	.00693
Bellevue	35	31	.02046	4	.00264
Belmond	34	14	.00924	20	.01320
Beloit	34	7	.00462	27	.01782
Bennett	35	30.5	.02013	4.5	.00297
Benson	32	18.5	.01221	13.5	.00891
*Bentley	29	18	.01188	11	.00726
*Benton	29	26	.01716	3	.00198
*Bentonsport	29	35	.02310	6–	.00396–
Berges Siding	32	29	.01914	3	.00198
Berne	32	15	.00990	17	.01122
*Bernhart	32	32	.02112	–	–
Bertram	34	27.5	.01815	6.5	.00429
Berwick	32	18.5	.01221	13.5	.00891
*Bettendorf	33	36.5	.02409	3.5–	.00231–
*Beulah	37	24.5	.01617	12.5	.00825
*Bevington	29	20.5	.01353	8.5	.00561
*Bidwell	29	30.5	.02013	1.5–	.00099–
*Big Rock	35	33.5	.02211	1.5	.00099
*Bingham	29	20	.01320	9	.00594
*Birmingham	32	33.5	.02211	1.5–	.00099
Blackhawk	32	19	.01254	13	.00858
Blairsburg	32	14.5	.00957	17.5	.01155
Blairstown	32	24.5	.01617	7.5	.00495
*Blakesburg	29	30.5	.02013	1.5–	.00099–
*Blanchard	29	21.5	.01419	7.5	.00495
Blanden	32	11	.00726	21	.01386
Blencoe	32	11.5	.00759	20.5	.01353
*Blockley	29	29	.01914	–	–
*Blockton	29	29	.01914	–	–
*Bloomfield	29	32	.02112	3–	.00198–
[fol. 474]					
*Blue Grass	32	36.5	.02409	4.5–	.00297–
Bode	34	11	.00726	23	.01518
Bolan	37	15.5	.01023	21.5	.01419
*Bonair	37	24.5	.01617	12.5	.00825
*Bonaparte	29	35	.02310	6–	.00396–
Bondurant	32	18.5	.01221	13.5	.00891
Bone	32	16	.01056	16	.01056
Bopneville	29	18	.01188	11	.00726
Border Plains	32	13.5	.00891	18.5	.01221
Boxholm	32	14	.00924	18	.01188
Botna	32	16.5	.01089	15.5	.01023
Bouton	32	16	.01056	16	.01056
Boyd	34	19	.01254	15	.00990
Boyden	34	7	.00462	27	.01782
Bover	32	14.5	.00957	17.5	.01155
*Braddyville	29	26	.01716	3	.00198
Bradford	32	15.5	.01023	16.5	.01089
Bradgate	34	11	.00726	23	.01518
Brainard	37	24.5	.01617	12.5	.00825

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Brandon	32	21.5	.01419	10.5	.00693
Brayton	32	20	.01320	12	.00792
*Brazil	29	30.5	.02013	1.5-	.00099-
Breda	32	14	.00924	18	.01188
Bremer	34	19	.01254	15	.00990
*Bricker	29	40	.02640	11-	.00726-
*Bridgewater	29	32	.02112	3-	.00198-
*Brighton	32	32	.02112	-	-
Bristow	32	16.5	.01089	15.5	.01023
Britt	34	13.5	.00891	20.5	.01353
Brogan	32	14.5	.00957	17.5	.01155
*Brompton	29	32	.02112	3-	.00198-
Bronson	32	8	.00528	24	.01584
Brooklyn	32	23	.01518	9	.00594
*Brooks	29	23	.01518	6	.00396
*Browns	35	38	.02508	3-	.00198-
Brunsville	34	7	.00462	27	.01782
Brushy	32	13.5	.00891	18.5	.01221
*Bryant	34	5.5	.00363	28.5	.01881
Bryantsburg	32	24.5	.01617	7.5	.00495
*Buchanan	35	30.5	.02013	4.5	.00297
Buckeye	32	16	.01056	16	.01056
Buck Grove	32	15	.00990	17	.01122
Buckingham	32	19.5	.01287	12.5	.00825
Bucknam	37	19.5	.01287	17.5	.01155
*Buffalo	33	36.5	.02409	3.5-	.00231-
Buffalo Center	37	12	.00792	25	.01650
*Bullard	31	42	.02772	11-	.00726-
Burchinal	34	15	.00990	19	.01254
Burdette	32	15	.00990	17	.01122
Burk	32	20.5	.01353	11.5	.00759
*Burlington	32	40	.02640	8-	.00528-
Burt	37	14	.00924	23	.01518
*Bussey	29	23	.01518	6	.00396
*Butler	32	27.5	.01815	4.5	.00297
*Calamus	35	32	.02112	3	.00198
Caldwells	32	16.5	.01089	15.5	.01023
California Jct.	32	13.5	.00891	18.5	.01221
Callender	32	13.5	.00891	18.5	.01221
*Calliope	34	7.5	.00495	26.5	.01749
Calmar	37	22	.01452	15	.00990
*Calumet	34	6.5	.00429	27.5	.01815
*Camanche	35	38	.02508	3-	.00198-
*Cambria	29	29	.01914	-	-
Cambridge	32	18	.01188	14	.00924
Cameron	34	15.5	.01023	18.5	.01221
Campbell	32	18	.01188	14	.00924
Camp Dodge	32	18	.01188	14	.00924
Campus	32	16	.01056	16	.01056
*Cantril	29	35	.02310	6-	.00396-
*Carbon	29	30.5	.02013	1.5-	.00099-
*Carlisle	29	18.5	.01221	10.5	.00693
*Carlson	35	36.5	.02409	1.5-	.00099-
Carnarvon	32	13.5	.00891	18.5	.01221

* Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

[fol. 475] EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Carnes	34	6	.00396	28	.01848
Carnforth	32	24.5	.01314	7.5	.00495
Carnforth Crossing	32	24.5	.01617	7.5	.00495
Carpenter	37	16	.01056	21	.01386
Carroll	32	15	.00990	17	.01122
Carrville	34	19	.01254	15	.00990
Carson	29	20	.01320	9	.00594
Cartersville	34	15.5	.01023	18.5	.01221
Casey	29	20	.01320	9	.00594
Castalia	37	24.5	.01617	12.5	.00825
Castana	32	12	.00792	20	.01320
Cedar Falls	32	19	.01254	13	.00858
Cedar Fall Juct	32	19	.01254	13	.00858
Cedar Heights	32	19	.01254	13	.00858
Cedar Rapids	32	26	.01716	6	.00396
Centerdale	32	30.5	.02013	1.5	.00099
*Center Jct	35	30.5	.02013	4.5	.00297
Center Point	32	24.5	.01617	7.5	.00495
*Centerville	29	30.5	.02013	1.5-	.00099-
Central City	35	26	.01716	9	.00594
Chamberlin	32	18	.01188	14	.00924
Chapin	34	15.5	.01023	18.5	.01221
*Chariton	29	23	.01518	6	.00396
Chales City	34	17.5	.01155	16.5	.01089
*Charlotte	35	36.5	.02409	1.5-	.00099-
Charter Oak	32	14	.00924	18	.01188
Chatsworth	34	7.5	.00495	26.5	.01749
*Chautauqua	29	16	.01056	13	.00858
Chelsea	32	21	.01386	11	.00726
Cheney	32	23	.01518	9	.00594
Cherokee	32	7	.00462	25	.01650
Chester	37	19	.01254	18	.01188
*Chillicothe	29	27.5	.01815	1.5	.00099
*Churchville	29	19	.01254	10	.00660
Churdan	32	13.5	.00891	18.5	.01221
*Cincinnati	29	33.5	.02211	4.5-	.00297-
Clara	32	12	.00792	20	.01320
Clare	34	12.5	.00825	21.5	.01419
*Clarence	35	30.5	.02013	4.5	.00297
*Clarinda	29	23	.01518	6	.00396
Clarion	32	13.5	.00891	18.5	.01221
*Clark	29	19.5	.01287	9.5	.00627
*Clarkson	29	18.5	.01221	10.5	.00693
Clarksville	32	18	.01188	14	.00924
*Clayton	37	27.5	.01815	9.5	.00627
*Clearfield	29	27.5	.01815	1.5	.00099
Clear Lake	34	15.5	.01023	18.5	.01221
Clear Lake Jct	34	15.5	.01023	18.5	.01221
Cleghorn	32	7	.00462	25	.01650
Clemons Grove	32	18	.01188	14	.00924
Clermont	37	24.5	.01617	12.5	.00825
Cleves	32	16.5	.01089	15.5	.01023
*Cliffland	29	30.5	.02013	1.5-	.00099-
*Clinton	35	38	.02508	3-	.00198-

* Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Clio	29	27.5	.01815	1.5	.00099
Clive	32	18	.01188	14	.00924
Cloverdale	34	5.5	.00363	28.5	.01881
Clutier	32	21	.01386	11	.00726
*Coalfield	29	26	.01716	3	.00198
*Coburg	29	20.5	.01353	8.5	.00561
Coggon	35	26	.01716	9	.00594
*Coin	29	20.5	.01353	8.5	.00561
Colfax	32	19.5	.01287	12.5	.00825
*Collett	32	33.5	.02211	1.5-	.00099-
Collins	32	18	.01188	14	.00924
Colo	32	18	.01188	14	.00924
Colonial	29	18	.01188	11	.00726
*Columbus Jct	32	33.5	.02211	1.5-	.00099-
Colwell	34	19	.01254	15	.00990
Commerce	29	18	.01188	11	.00726
*Cone	32	33.5	.02211	1.5-	.00099-
*Conger	29	19.5	.01287	9.5	.00627
[fol. 476]					
Conover	32	24.5	.01617	12.5	.00825
Conrad	32	18	.01188	14	.00924
*Conroy	32	29	.01914	3	.00198
**Conway	29	30.5	.02013	1.5-	.00099-
Coon Rapids	32	16.5	.01089	15.5	.01023
Cooper	32	15	.00990	17	.01122
*Coppock	32	33.5	.02211	1.5-	.00099-
Cora	32	10	.00660	22	.01452
*Cordova	29	20.5	.01353	8.5	.00561
Corley	32	20	.01320	12	.00792
Cornelia	34	14	.00924	20	.01320
*Corning	29	23	.01518	6	.00396
Correctionville	32	9	.00594	23	.01518
Corwith	34	13	.00858	21	.01386
*Corydon	29	26	.01716	3	.00198
*Cotter	32	35	.02310	3-	.00198-
*Cottonwood	32	36.5	.02409	4.5-	.00297-
Cou Falls	32	27.5	.01815	4.5	.00297
Coulter	32	14.5	.00957	17.5	.01155
*Council Bluffs	29	15.5	.01023	13.5	.00891
County	32	19	.01254	13	.00858
*County Line (Jefferson Co.)	32	33.5	.02214	1.5-	.00099-
Covington	32	26	.01716	6	.00396
Craig	32	7	.00462	25	.01650
*Cram's Sand Pit	29	18	.01188	11	.00726
Crandic	32	26	.01716	6	.00396
*Cranston	32	36.5	.02409	4.5-	.00297-
*Crawfordsville	32	33.5	.02211	1.5-	.00099-
*Crescent	32	16.5	.01089	15.5	.01023
Cresco	37	20.5	.01353	18.5	.01089
*Creston	29	26	.01716	3	.00198
Crippen	34	9	.00594	25	.01650
*Cromwell	29	26	.01716	3	.00198
*Croton	29	36.5	.02409	7.5-	.00495-

*Rates apply only by truck. No rail rates published.
**Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Crown	29	30.5	.02013	1.5–	.00099–
Crystal Lake	34	14.5	.00957	19.5	.01287
*Cumberland	29	33.5	.02211	4.5–	.00297–
*Cumming	29	18.5	.01221	10.5	.00693
Curlew	34	9	.00594	25	.01650
Cushing	32	9	.00594	23	.01518
Cylinder	34	9.5	.00627	24.5	.01617
Daileys	32	18.5	.01221	13.5	.00891
Dakota City	34	12.5	.00825	21.5	.01419
Dallas Center	32	16	.01056	16	.01056
Dana	32	14	.00924	18	.01188
Danbury	32	13.5	.00891	18.5	.01221
*Danville	32	38	.02508	6–	.00396–
*Davenport	33	36.5	.02409	3.5–	.00231
David	37	19.5	.01287	17.5	.01155
*Davis City	29	30.5	.02013	1.5–	.00099–
Dawson	32	16	.01056	16	.01056
Dayton	32	14	.00924	18	.01188
*Dean	29	32	.02112	3–	.00198–
*Deans Spur	32	32	.02112	–	–
Decorah	37	24.5	.01617	12.5	.00825
*Decatur City	29	27.5	.01815	1.5	.00099
Dedham	32	16.5	.01089	15.5	.01023
*Deep River	32	26	.01716	6	.00396
Defiance	32	17	.01122	15	.00990
*De Kalb	29	27.5	.01815	1.5	.00099
Delaware	35	26	.01716	9	.00594
Delhi	35	27.5	.01815	7.5	.00495
*Delmar	35	36.5	.02409	1.5–	.00099–
Deloit	32	14.5	.00957	17.5	.01155
*Delphos	29	35	.02310	6–	.00396–
Delray	29	26	.01716	3	.00198
*Delta	32	27.5	.01815	4.5	.00297
Denhart	34	13.5	.00891	20.5	.01353
Denison	32	15	.00990	17	.01122
*Dennis	29	30.5	.02013	1.5–	.00099–
Denver	32	19	.01254	13	.00858
*Derby	29	26	.01716	3	.00198
[fol. 477]					
Des Moines	29	18	.01188	11	.00726
De Soto	29	18.5	.01221	10.5	.00693
Devon	37	19	.01254	18	.01188
Dewar	32	20	.01320	12	.00792
*De Witt	35	33.5	.02211	1.5	.00099
Dexter	29	19.5	.01287	9.5	.00627
*Diagonal	29	26	.01716	3	.00198
Dickens	34	9	.00594	25	.01650
Dike	32	18.5	.01221	13.5	.00891
Dillon	32	19	.01254	13	.00858
Dinsdale	32	18.5	.01221	13.5	.00891
Divide Spur	34	7.5	.00495	26.5	.01749
*Dixon	35	33.5	.02211	1.5	.00099
Dolliver	37	14	.00924	23	.01518

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Donahue	35	25	.02310	–	–
Donnan	35	24.5	.01617	10.5	.00693
*Donnellson	29	38	.02508	9–	.00594–
*Donnelly	29	20.5	.01353	8.5	.00561
Doon	34	5	.00330	29	.01914
Doris	35	24.5	.01617	10.5	.00693
Dotson	32	19	.01254	13	.00858
Doubleday	34	19	.01254	15	.00990
*Douds	29	32	.02112	3–	.00198–
Dougherty	34	16	.01066	18	.01188
Dow City	32	15	.00990	17	.01122
Downey	32	30.5	.02013	1.5	.00099
Dows	32	14.5	.00957	17.5	.01155
*Dr[illegible]sville	29	32	.02112	3–	.00198–
Dub[illegible]ue	35	31	.02046	4	.00264
*Dudley	29	27.5	.01815	1.5	.00099
*Dumfries	29	16.5	.01089	12.5	.00825
Dumont	32	16.5	.01089	15.5	.01023
Dunbar	32	20	.01320	12	.00792
Duncan	34	14	.00924	20	.01320
Duncombe	32	13.5	.00891	18.5	.01221
Dundee	35	24.5	.01617	10.5	.00693
Dunkerton	32	21	.01386	11	.00726
Dunlap	32	15	.00990	17	.01122
*Dunreath	29	20	.01320	9	.00594
Durango	35	30.5	.02013	4.5	.00297
Durant	32	30.5	.02013	1.5	.00099
Dyersville	35	27.5	.01815	7.5	.00495
Dysart	32	20	.01320	12	.00792
Eagle Grove	32	13.5	.00891	18.5	.01221
Earlham	29	19	.01254	10	.00660
Earling	32	17.5	.01155	14.5	.00957
Earlville	35	26	.01716	9	.00594
Early	32	11.5	.00759	20.5	.01353
Easley	32	13.5	.00891	18.5	.01221
*East Pleasant Plain	32	32	.02112	–	–
*East Switch	29	16	.01056	13	.00858
East Waterloo	32	13	.01254	13	.00858
*Eddyville	29	26	.01716	3	.00198
Edgewood	35	26	.01716	9	.00594
Edna	34	5	.00330	29	.01914
Ehler	35	26	.01716	9	.00594
Elberon	32	21.5	.01419	10.5	.00693
*Eldon	29	30.5	.02013	1.5	.00099
Eldora	32	17	.01122	15	.00990
*Eldridge Jct.	35	35	.02310	–	–
Eleanor	32	18	.01188	14	.00924
*Electra Mine	29	21	.01386	8	.00528
Elgin	37	24.5	.01617	12.5	.00825
Elkader	37	27.5	.01815	9.5	.00627
Elkhart	32	18	.01188	14	.00924
*Elk River Jct.	35	40	.02640	5–	.00330
*Elliott	29	21	.01386	8	.00528
Ells	32	14.5	.00957	17.5	.01155

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Elliston	29	27.5	.01815	1.5	.00099
Ellsworth	32	15.5	.01023	16.5	.01089
Elma	37	19	.01254	18	.01188
Elmira	32	29	.01914	3	.00198
[fol. 478]					
*Elm Springs	34	10	.00660	24	.01584
*Elrick Jct.	32	38	.02508	6-	.00396-
Elwell	32	18	.01188	14	.00924
*Elwood	35	35	.02310	-	-
*Ely	32	26	.01716	6	.00396
*Emerson	29	18.5	.01221	10.5	.00693
Emery	34	15.5	.01023	18.5	.01221
Emmetsburg	34	9	.00594	25	.01650
Emmons Iowa-Minn.	37	15.5	.01023	21.5	.01419
Enterprise	33	18	.01188	14	.00924
Epworth	34	29	.01914	5	.00330
Ericson	32	16	.01056	16	.01056
*Essex	29	20.5	.01353	8.5	.00561
Estherville	34	7.6	.00495	26.5	.01749
*Etta	29	19	.01254	10	.00660
*Euclid	32	17	.01122	15	.00990
*Evans	29	24.5	.01617	4.5	.00297
Evanston	32	13.5	.00891	18.5	.01221
Everly	34	7	.00462	27	.01782
Exira	32	20	.01320	12	.00792
*Exline	29	32	.02112	3-	.00198-
Fairbank	32	22	.01452	10	.00660
Fairfax	32	26	.01716	6	.00396
*Fairfield	32	32	.02112	-	-
*Fairmont	29	20	.01320	9	.00594
*Fairport	33	35	.02310	2-	.00132-
Farley	35	29	.01914	6	.00396
Farlin	32	14	.00924	18	.01188
Farmer	32	19	.01254	13	.00858
Farmersburg	37	26	.01716	11	.00726
*Farmington	29	36.5	.02409	7.5-	.00495-
Farnhamville	32	13.5	.00891	18.5	.01221
*Farragut	29	20.5	.01353	8.5	.00561
*Farson	32	30.5	.02013	1.5	.00099
Faulkner	32	16	.01056	16	.01056
Fayette	35	24.5	.01617	10.5	.00693
Fenton	37	14	.00924	23	.01518
Ferguson	32	19	.01254	13	.00858
Fernald	32	18	.01188	14	.00924
*Fifield	29	20.5	.01353	8.5	.00561
*Findley	32	17.5	.01155	14.5	.00957
*Flanders	32	9.5	.00627	22.5	.01485
Flint	34	15.5	.01023	18.5	.01221
Flint Jct.	29	18	.01188	11	.00726
Florence	32	13.5	.00891	18.5	.01221
*Flagler	29	21	.01386	8	.00528
*Floris	29	32	.02112	3-	.00198
Floyd	37	19	.01254	18	.01188

* Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Floyd Crossing	34	16.5	.01089	17.5	.01155
Flugstead	32	14	.00924	18	.01188
*Folsom	29	18	.01188	11	.00726
Fonda	32	10.5	.00693	21.5	.01419
*Fontanelle	29	30.5	.02013	1.5–	.00099–
*Ford (Warren Co.)	29	18.5	.01221	10.5	.00693
Forest City	37	14	.00924	23	.01518
Ft. Atkinson	37	20	.01320	17	.01122
Ft. Dodge	32	13.5	.00891	18.5	.01221
*Ft. Madison	31	40	.02640	9–	.00594–
Fostoria	34	9	.00594	25	.01650
*Franklin	29	38	.02508	9–	.00594–
Fraser	32	14.5	.00957	17.5	.01155
*Frederic	29	27.5	.01815	1.5	.00099
Fredericksburg	34	19	.01254	15	.00990
*Fredonia	32	36.5	.02409	4.5–	.00297–
Freeman	37	15.5	.01023	21.5	.01419
*Fremont	32	26	.01716	6	.00396
*Froelich	37	26	.01716	11	.00726
*Fruitland	32	35	.02310	3–	.00198–
Galbraith	34	13	.00858	21	.01386
Galt	32	14	.00924	18	.01188
Galva	32	11	.00726	21	.01386
[fol. 479]					
Garden City	32	17.5	.01155	14.5	.00957
*Garden Grove	29	27.5	.01815	1.5	.00099
Gardiner	32	18	.01188	14	.00924
*Garfield	29	32	.02112	3–	.00198–
*Garland	32	38	.02508	6	.00396
Garner	34	14	.00924	20	.01320
Garrison	32	21	.01386	11	.00726
Garwin	32	19	.01254	13	.00858
Gaza	34	6	.00396	28	.01848
Gehlen	34	6.5	.00429	27.5	.01815
Geneva	32	15.5	.01023	16.5	.01089
George	34	5	.00330	29	.01914
Germantown	34	6.5	.00429	27.5	.01815
*Gibson	32	29	.01914	3	.00198
Gifford	32	17	.01122	15	.00990
Gilbert	32	16	.01056	16	.01056
Gilbertville	32	20.5	.01353	11.5	.00759
Gillette Grove	34	9	.00594	25	.01650
*Gilliat	29	17	.01122	12	.00792
Gilman	32	20	.01320	12	.00792
Gilmore City	34	11	.00726	23	.01518
*Givin	29	26	.01716	3	.00198
Gladbrook	32	18.5	.01221	13.5	.00891
Gladstone	32	20.5	.01353	11.5	.00759
*Gladwin	32	35	.02310	3–	.00198–
*Glendalg	32	33.5	.02211	1.5–	.00099–
Glenden	32	21.5	.01419	10.5	.00693
Glen Ellen	32	9	.00594	23	.01518
*Glenwood	29	18	.01188	11	.00726

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Glidden	32	15	.00990	17	.01122
Golden	35	26	.01716	9	.00594
Goldfield	34	13	.00858	21	.01386
Goodell	34	14	.00924	20	.01320
*Goose Lake	35	38	.02508	3-	.00198-
Gordon's Ferry	35	31	.02046	4	.00264
Gowrie	32	13.5	.00891	18.5	.01221
*Grable	32	17.5	.01155	14.5	.00957
Graettinger	3.	9	.00594	25	.01650
Graf	35	30.5	.02013	4.5	.00297
Grafton	37	15.5	.01023	21.5	.01419
Grand Jct.	32	15	.00990	17	.01122
*Grand Mound	35	33.5	.02211	1.5	.00099
*Grand River	29	27.5	.01815	1.5	.00099
Granger	32	18	.01188	14	.00924
Granite	34	5	.00330	29	.01914
Granville	34	6	.00396	28	.01848
*Gravity	29	20.5	.01353	8.5	.00561
Gray	32	17	.01122	15	.00990
Greeley	35	26	.01716	9	.00594
Greene	34	17	.01122	17	.01122
*Greenfield	29	29	.01914	-	-
*Green Island	35	36.5	.02409	1.5-	.00099-
Green Mountain	32	18.5	.01221	13.5	.00891
Gridley	37	14	.00924	23	.01518
Grimes	32	18	.01188	14	.00924
Grinnell	32	21.5	.01419	10.5	.00693
Griswold	29	20	.01320	9	.00594
Grundy Center	32	18	.01188	14	.00924
Gruver	37	8	.00528	29	.01914
*Guernsey	32	24.5	.01617	7.5	.00495
Guthrie Center	32	23	.01518	9	.00594
*Guttenberg	37	29	.01914	8	.00528
Gypsum	32	13.5	.00891	18.5	.01221
Hadden Hill	32	18	.01188	14	.00924
Halbur	32	15	.00990	17	.01122
*Hale	35	30.5	.02013	4.5	.00297
Halfa	37	14	.00924	23	.01518
*Hamburg	29	19.5	.01287	9.5	.00627
*Hamill	32	38	.02508	6-	.00396-
*Hamilton	29	24.5	.01617	4.5	.00297
Hamlin	32	20	.01320	12	.00792
Hampton	32	15.5	.01023	16.5	.01089
Hancock	29	20	.01320	9	.00594
[fol. 480]					
Hanford	34	15.5	.01023	18.5	.01221
*Hanley	00	20	.01320	9	.00594
Hankentown	37	15.5	.01023	21.5	.01419
Hanna	34	13	.00858	21	.01386
Hansell	32	15.5	.01023	16.5	.01089
Harcourt	32	13.5	.00891	18.5	.01221
Hardy	34	12.5	.00825	21.5	.01419
Harl	32	13.5	.00891	18.5	.01221

* Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Harlan	32	20	.01320	12	.00792
*Harper	32	29	.01914	3	.00198
*Harper's Ferry	37	27.5	.01815	9.5	.00627
Harris Osceola Co.	34	6	.00396	28	.01848
*Hartford	29	19	.01254	10	.00660
Hartley	34	6	.00396	28	.01848
Hartwick	32	23	.01518	9	.00594
*Harvard	29	30.5	.02013	1.5-	.00099-
*Harvey	29	21.5	.01419	7.5	.00495
*Haskins	32	33.5	.02211	1.5-	.00099-
*Hastie	29	18.5	.01221	10.5	.00693
*Hastings	29	18.5	.01221	10.5	.00693
Haugendale	37	24.5	.01617	12.5	.00825
Havelock	34	10	.00660	24	.01584
Haverhill	32	19	.01254	13	.00858
*Havre	32	33.5	.02211	1.5-	.00099-
Hawarden	34	7	.00462	27	.01782
Hawkeye	35	24.5	.01617	10.5	.00693
Hawley	37	14	.00924	23	.01518
*Hayesville	32	29	.01914	3	.00198
Hayfield	37	14	.00924	23	.01518
Hazelton	32	24.5	.01617	7.5	.00495
*Hedrick	32	27.5	.01815	4.5	.00297
*Henderson	29	19	.01254	10	.00660
Herndon	32	16	.01056	16	.01056
*Hepburn	29	23	.01518	6	.00396
Herring	32	15	.00990	17	.01122
Herrold	32	18	.01188	14	.00924
*Hetzel	32	38	.02508	6-	.00396-
*Hiattsville	29	27.5	.01815	1.5	.00099
Hicks	32	18.5	.01221	13.5	.00891
High Bridge	32	18	.01188	14	.00924
*Highland	32	30.5	.02013	1.5	.00099
Highland Park	29	18	.01188	11	.00726
Highley	32	19	.01254	13	.00858
Highview	32	14	.00924	18	.01188
*Hills	32	30.5	.02013	1.5	.00099
*Hillsboro	32	35	.02310	3-	.00198-
*Hilton	29	26	.01716	3	.00198
Hinton	32	7	.00462	25	.01650
Hobarton	34	11	.00726	23	.01518
*Hocking	29	26	.01716	3	.00198
Holland	32	17.5	.01155	14.5	.00957
Holmes	34	13.5	.00891	20.5	.01353
Holstein	32	10	.00660	22	.01452
Homestead	32	27.5	.01815	4.5	.00297
*Honey Creek	32	16	.01056	16	.01056
Hope	32	13.5	.00891	18.5	.01221
Hopkinton	35	29	.01914	6	.00396
Hopley	29	20	.01320	9	.00594
Hornick	32	9.5	.00627	22.5	.01485
Hospers	34	5.5	.00363	28.5	.01881
*Houghton	32	36.5	.02409	4.5-	.00297-
*Howell	29	21	.01386	8	.00528

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"-" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Hubbard	32	16.5	.01089	15.5	.01023
Hudson	32	19	.01254	13	.00858
Hughes	32	17	.01122	15	.00990
Hull	34	7	.00462	27	.01782
Humboldt	34	12.5	.00825	21.5	.01419
*Humeston	29	5.5	.00363	23.5	.01551
Huntington	34	8	.00528	26	.01716
Hurley	34	15.5	.01023	18.5	.01221
Hurst Mill Spur	35	31	.02046	4	.00264
Hutchins	34	13	.00858	21	.01386
Huxley	32	16.5	.01089	15.5	.01023
Hyperion	32	18	.01188	14	.00924
[fol. 481]					
Ida Grove	32	14	.00924	18	.01188
*Imogene	29	18.5	.01221	10.5	.00693
Independence	32	24.5	.01617	7.5	.00495
*Indianola	29	19.5	.01287	9.5	.00627
Industry	32	13.5	.00891	18.5	.01221
Ingersoll	32	18	.01188	14	.00924
Inwood	34	7	.00462	27	.01782
Ionia	34	19	.01254	15	.00990
Iowa City	32	29	.01914	3	.00198
Iowa Falls	32	15.5	.01023	16.5	.01089
Iowana	32	40	.02640	8	.00528
Ira	32	18.5	.01221	13.5	.00891
Ireton	34	6.5	.00429	27.5	.01815
Irma	34	19	.01254	15	.00990
Irving	32	23	.01518	9	.00594
Irvington	34	13	.00858	21	.01386
Irwin	32	16.5	.01089	15.5	.01023
*Island Park	29	16	.01056	13	.00858
Jackson Jct	34	19.5	.01287	14.5	.00957
Jamaica	29	16	.01056	13	.00858
James	32	7	.00462	25	.01650
*Jamison	29	23	.01518	6	.00396
Janesville	32	19	.01254	13	.00858
Jefferson	32	15	.00990	17	.01122
*Jerome	29	30.5	.02013	1.5	.00099
Jesup	32	22	.01452	10	.00660
Jewell	32	15	.00990	17	.01122
Johnston	32	18	.01188	14	.00924
Joice	37	15.5	.01023	21.5	.01419
Jolley	32	11.5	.00759	20.5	.01353
Jordan	32	16	.01056	16	.01056
Judd	32	13.5	.00891	18.5	.01221
Julien	35	30.5	.02013	4.5	.00297
Juniata	32	13.5	.00891	18.5	.01221
Kalo	32	13.5	.00891	18.5	.01221
*Kalona	32	35	.02310	3	.00198
Kamrar	32	14.5	.00957	17.5	.01155
Kanawha	34	13.5	.00891	20.5	.01353
*Kellerton	29	32	.02112	3	.00198
Kelley	32	16	.01056	16	.01056

* Rates apply only by truck. No rail rates published.
"—" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents / Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Kellogg	32	21.5	.01419	10.5	.00693
Kennebec	32	11	.00726	21	.01386
Kennedy	32	17	.01122	15	.00990
Kensett	37	15.5	.01023	21.5	.01419
*Kent	29	27.5	.01815	1.5	.00099
Kenwood	32	15	.00990	17	.01122
Kenwood Park	32	26	.01716	6	.00396
*Keokuk	31	40	.02640	9-	.00594-
*Keosauqua	29	35	.02310	6-	.00396-
*Keota	32	30.5	.02013	1.5	.00099
Kesley	32	18	.01188	14	.00924
*Keswick	32	29	.01914	3	.00198
Keystone	32	21.5	.01419	10.5	.00693
Kidder	35	29	.01914	6	.00396
*Kilbourne	29	33.5	.02211	4.5-	.00297-
*Killduff	32	27.5	.01815	4.5	.00297
*Kimball	29	20	.01320	9	.00594
*Kingsley	32	9	.00594	23	.01518
*Kinross	32	30.5	.02013	1.5	.00099
Kirkman	32	18	.01188	14	.00924
*Kirkville	29	27.5	.01815	1.5	.00099
Kiron	32	15	.00990	17	.01122
Klemme	34	14	.00924	20	.01320
Knierim	32	13	.00858	19	.01254
*Kniffin	29	29	.01914	-	-
Knoke	32	11	.00726	21	.01386
Knowles	32	19	.01254	13	.00858
*Knoxville	29	20.5	.01353	8.5	.00561
Konigsmark	32	26	.01716	6	.00396
*Lacey	32	26	.01716	6	.00396
*Lacona	29	21.5	.01419	7.5	.00495
*Laddsdale	29	32	.02112	3-	.00198-
*Ladoga	29	20.5	.01353	8.5	.00561

[fol. 482]

Ladora	32	26	.01716	6	.00396
Lafayette	32	26	.01716	6	.00396
Lake City	32	13.5	.00891	18.5	.01221
Lake Mills	37	15.5	.01023	21.5	.01419
Lake Park	34	6	.00396	28	.01848
Lake Side	32	13.5	.00891	18.5	.01221
Lake View	32	13.5	.00891	18.5	.01221
Lakota	37	11.5	.00759	25.5	.01683
*Lamb	32	21.5	.01419	10.5	.00693
LaMoile	32	18	.01188	14	.00924
*Lamoni	29	32	.02112	3-	.00198-
Lamont	35	24.5	.01617	10.5	.00693
Lanesboro	32	13.5	.00891	18.5	.01221
Langdon	34	7.5	.00495	26.5	.01749
Langworthy	35	29	.01914	6	.00396
*Lansing	37	30.5	.02013	6.5	.00429
Lanyon	32	13.5	.00891	18.5	.01221
LaPorte City	32	20.5	.01353	11.5	.00759
Larchwood	34	.5	.00330	29	.01914

* Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 0—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Larrabee	34	6.5	.00429	27.5	.01815
Latimer	34	15	.00990	19	.01254
*Latty	32	40	.02640	8–	.00528–
Laurel	32	23	.01518	9	.00594
Laurens	34	9	.00594	25	.01650
Lavinia	32	13.5	.00891	18.5	.01221
Lawler	34	19	.01254	15	.00990
Lawn Hill	32	17	.01122	15	.00990
Lawton	32	9	.00594	23	.01518
*LeClaire	35	38	.02508	3–	.00198–
Ledyard	37	14	.00924	23	.01518
Leeds	32	9	.00594	23	.01518
LeGrand	32	19	.01254	13	.00858
Lehigh	32	14	.00924	18	.01188
*Leighton	29	23	.01518	6	.00396
Leland	37	14	.00924	23	.01518
LeMars	32	7	.00462	25	.01650
Lena	32	14	.00924	18	.01188
*Lenox	29	29	.01914	–	–
*Leon	29	29	.01914	–	–
*LeRoy	29	27.5	.01815	1.5	.00099
Lester	34	5	.00330	29	.01914
*Letts	32	36.5	.02409	4.5–	.00297–
Leverett	34	7.5	.00495	26.5	.01749
*Levey	29	18.5	.01221	10.5	.00693
Lewis	29	20	.01320	9	.00594
*Libertyville	32	32	.02112	–	–
*Lida	29	19	.01254	10	.00660
Lidderdale	32	14	.00924	18	.01188
Lime Springs	37	19	.01254	18	.01188
Lincoln	32	18.5	.01221	13.5	.00891
Linden	32	16	.01056	16	.01056
*Linby	32	32	.02112	–	–
*Lineville	29	29	.01914	–	–
Linn	32	24.5	.01617	7.5	.00495
Linn Grove	34	8.5	.00561	25.5	.01683
*Linwood	33	36.5	.02409	3.5–	.00231–
Lisbon	35	27.5	.01815	7.5	.00495
Liscomb	32	18	.01188	14	.00924
Little Cedar	37	19.5	.01287	17.5	.01155
Little Rock	34	5	.00330	29	.01914
Livermore	34	11.5	.00759	22.5	.01485
*Lockman	29	27.5	.01815	1.5	.00099
*Lockridge	32	35	.02310	3–	.00198–
Logan	32	15	.00990	17	.01122
Lohrville	32	13.5	.00891	18.5	.01221
Lone Rock	37	14	.00924	2	.01518
*Lone Tree	32	32	.02112	–	–
[fol. 483]					
Lorah	32	20	.01320	12	.00792
*Larimer	29	23	.01518	6	.00396
*Lost Nation	35	33.5	.02211	1.5	.00099

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Louisa	32	26	.01716	6	.00396
*Loveland	32	15.5	.01023	16.5	.01089
*Lovilia	29	24.5	.01617	4.5	.00297
*Lowden	35	32	.02112	3	.00198
*Low Moor	35	36.5	.02409	1.5–	.00099–
Luana	37	24.5	.01617	12.5	.00825
*Lucas	29	24.5	.01617	4.5	.00297
Lundgren	32	13.5	.00891	18.5	.01221
Luray	32	18.5	.01221	13.5	.00891
Luther	32	16	.01056	16	.01056
Luton	32	9	.00594	23	.01518
Luverne	34	13	.00858	21	.01386
Luzerne	32	23	.01518	9	.00594
*Lynnville	32	26	.01716	6	.00396
*Lynnville Jct.	32	26	.01716	6	.00396
*Lyons	35	38	.02508	3–	.00198–
Lytton	32	13.5	.00891	18.5	.01221
McCallsburg	32	18	.01188	14	.00924
*McCausland	35	36.5	.02409	1.5–	.00099–
*McChane	32	23	.01518	9	.00594
*McClelland	29	17.5	.01155	11.5	.00759
*McGregor	37	26	.01716	11	.00726
McIntire	37	19	.01254	18	.01188
McNally	34	7	.00462	27	.01782
*McPaul	29	18.5	.01221	10.5	.00693
*McPherson	29	18.5	.01221	10.5	.00693
*Macedonia	29	19.5	.01287	9.5	.00627
Maclay	34	7.5	.00495	26.5	.01749
Macy	32	15.5	.01023	16.5	.01089
Madrid	32	16	.01056	16	.01056
*Magill	32	17	.01122	15	.00990
*Maine	29	29	.01914	–	–
Malcom	32	21.5	.01419	10.5	.00693
Mallard	34	9	.00594	25	.01650
*Malone	35	35	.02310	–	–
*Maloy	29	27.5	.01815	1.5	.00099
*Malvern	29	18	.01188	11	.00726
Manchester	35	26	.01716	9	.00594
Manilla	32	16	.01056	16	.01056
Manly	37	15.5	.01023	21.5	.01419
Manning	32	16.5	.01089	15.5	.01023
Manson	32	11.5	.00759	20.5	.01353
Maple Hill	37	9	.00594	28	.01848
Maple River	32	15	.00990	17	.01122
Mapleton	32	12	.00792	20	.01320
*Maquoketa	35	36.5	.02409	1.5–	.00099–
Marathon	34	9	.00594	25	.01650
Marble Rock	34	16.5	.01089	17.5	.01155
Marcus	32	7	.00462	25	.01650
Marengo	32	26	.01716	6	.00396
Marietta	32	18	.01188	14	.00924
Marion	32	26	.01716	6	.00396
Marne	29	20	.01320	9	.00594
*Marquette	37	26	.01716	11	.00726

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Marsh	32	36.5	.02409	4.5–	.00297–
Marshalltown	32	18.5	.01221	13.5	.00891
*Martelle	35	27.5	.01815	7.5	.00495
*Martensdale	29	19	.01254	10	.00660
*Martins	35	36.5	.02409	1.5–	.00099–
*Martinsburg	32	27.5	.01815	4.5	.00297
Mason City	34	15.5	.01023	18.5	.01221
Masonville	35	24.5	.01617	10.5	.00693
*Massena	29	32	.02112	3–	.00198–
*Massillon	35	33.5	.02211	1.5	.00099
Matlock	34	5	.00330	29	.01914
Maurice	34	6.5	.00429	27.5	.01815
Max	34	7	.00462	27	.01782
Maxwell	32	18	.01188	14	.00924
*Maxon	29	26	.01716	3	.00198
[fol. 484]					
Maynard	35	24.5	.01617	10.5	.00693
Mechanicsville	35	29	.01914	6	.00396
*Medinapolis	32	38	.02508	6–	.00396–
Melbourne	32	18.5	.01221	13.5	.00891
*Melcher	29	21	.01386	8	.00528
*Melrose	29	29	.01914	–	–
Meltonville	37	16.5	.01089	20.5	.01353
Melvin	34	5.5	.00363	28.5	.01881
Menlo	29	20	.01320	9	.00594
Meriden	32	7	.00462	25	.01650
*Merle	29	23	.01518	6	.00396
Merrill	32	7	.00462	25	.01650
*Mertensville	31	36.5	.02409	5.5–	.00363–
Meservey	34	14.5	.00957	19.5	.01287
Metz	32	20.5	.01353	11.5	.00759
Middle Amana	32	27.5	.01815	4.5	.00297
*Middletown	32	38	.02508	6–	.00396–
Midland	34	5	.00330	29	.01914
Mid River	32	27.5	.01815	4.5	.00297
Midvale	32	16	.01056	16	.01056
*Miles	35	38	.02508	3–	.00198–
Milford	34	9	.00594	25	.01650
Miller (Hancock Co.)	37	14	.00924	23	.01518
Miller (Polk Co.)	32	18	.01188	14	.00924
*Millerton	29	26	.01716	3	.00198
*Millman	29	18.5	.01221	10.5	.00693
*Milo	29	20.5	.01353	8.5	.00561
*Milton	29	35	.02310	6–	.00396–
Minburn	32	16	.01056	16	.01056
*Minden	29	17	.01122	12	.00792
*Mineola	29	17	.01122	12	.00792
Minerva	32	18	.01188	14	.00924
Minerva Jct.	32	18	.01188	14	.00924
Mingo	32	18.5	.01221	13.5	.00891
Missouri Valley	32	14	.00924	18	.01188
Mitchell	37	19	.01254	18	.01188
Mitchellville	32	19	.02154	13	.00858

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Modale	32	13.5	.00891	18.5	.01221
Mona	37	17	.01122	20	.01320
Mondamin	32	13	.00858	19	.01254
Moneta	34	6.5	.00429	27.5	.01815
*Monette	29	23	.01518	6	.00396
*Monmouth	35	32	.02112	3	.00198
Monona	37	24.5	.01617	12.5	.00825
*Monroe	29	20.5	.01353	8.5	.00561
*Montezuma	32	32	.02112	–	–
Montgomery	34	6.5	.00429	27.5	.01815
Monticello	35	29	.01914	6	.00396
Montieth	32	21.5	.01419	10.5	.00693
Montour	32	19.5	.01287	12.5	.00825
*Montpelier	33	36.5	.02409	3.5-	.00231-
*Montrose	31	42	.02772	11-	.00726-
*Mooar	29	40	.02640	11-	.00726-
Moorhead	32	14	.00924	18	.01188
Moorland	32	13	.00858	19	.01254
Moran	32	18	.01188	14	.00924
*Moravia	29	27.5	.01815	1.5	.00099
*Morley	35	29	.01914	6	.00396
Morning Side	32	9	.00594	23	.01518
Morrison	32	18	.01188	14	.00924
Morse	32	29	.01914	3	.00198
Moscow	32	30.5	.02013	1.5	.00099
*Moulton	29	30.5	.02013	1.5-	.00099-
*Moulten Jct.	29	32	.02112	3-	.00198-
Mount Auburn	32	21.5	.01419	10.5	.00693
*Mt. Ayr	29	35	.02310	6-	.00396-
*Mount Joy	35	35	.02310	–	–
*Mt. Pleasant	32	36.5	.02409	4.5-	.00297-
*Mt. Sterling	29	38	.02508	9-	.00594-
*Morning Sun	32	36.5	.02409	4.5-	.00297-
[fol. 485]					
*Mt. Union	32	36.5	.02409	4.5-	.00297-
Mt. Vernon	35	27.5	.01815	7.5	.00495
*Mt. Zion	29	33.5	.02211	4.5-	.00297-
Moville	32	9	.00594	23	.01518
*Murphy	32	21	.01386	11	.00726
*Murray	29	26	.01716	3	.00198
*Muscatine	33	33.5	.02211	.5-	.00033-
*Mystic	29	29	.01914	–	–
Napier	32	16	.01056	16	.01056
Nashua	34	19	.01254	15	.00990
*Nashville	35	33.5	.02211	1.5	.00099
Neils	37	13.5	.00891	23.5	.01551
Nemaha	32	13.5	.00891	18.5	.01221
*Neoga	29	13.5	.00891	15.5	.01023
*Neola	29	17.5	.01155	11.5	.00759
*Nepas	29	20.5	.01353	8.5	.00561
Nevada	32	18	.01188	14	.00924
*New Albin	37	32	.02112	5	.00330
*New Boston	29	26	.01716	3	.00198

* Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Newburg	32	20	.01320	12	.00792
Newell	32	9.5	.00627	22.5	.01485
Newhall	32	23	.01518	9	.00594
New Hampton	34	19	.01254	15	.00990
New Hartford	32	18	.01188	14	.00924
*New Liberty	35	33.5	.02211	1.5	.00099
*New London	32	36.5	.02409	4.5–	.00297–
*New Market	29	19.5	.01287	9.5	.00627
*Newport	32	38	.02508	6–	.00396–
*New Sharon	32	24.5	.01617	7.5	.00495
Newton	32	21.5	.01419	10.5	.00693
*New Virginia	29	23	.01518	6	.00396
*Nichols	32	32	.02112	–	–
Nilesville	34	19	.01254	15	.00990
*Nira	32	32	.02112	–	–
*Nobleton	29	19	.01254	10	.00660
*Nodaway	29	21.5	.01419	7.5	.00495
*Noel	35	36.5	.02409	1.5–	.00099–
Nora Jct.	34	15.5	.01023	18.5	.01221
Nora Springs	34	15.5	.01023	18.5	.01221
Nora Springs Jct.	34	15.5	.01023	18.5	.01221
Nordeness	37	24.5	.01617	12.5	.00825
Normal	32	19	.01254	13	.00858
Norris	32	19	.01254	13	.00858
*Northboro	29	21.5	.01419	7.5	.00495
*North Buena Vista	35	30.5	.02013	4.5	.00297
*North English	32	32	.02112	–	–
North Liberty	32	27.5	.01815	4.5	.00297
*North Muscatine	32	35	.02310	3–	.00198–
Northwood	37	15.5	.01023	21.5	.01419
*Norwalk	29	18.5	.01221	10.5	.00693
Norway	32	24.5	.01617	7.5	.00495
*Norwich	29	20.5	.01353	8.5	.00561
Norwoodville	32	18.5	.01221	13.5	.00891
Nuel	32	13.5	.00891	18.5	.01221
*Numa	29	32	.02112	3–	.00198–
Oakdale	32	29	.01914	3	.00198
*Oak Grove	32	24.5	.01617	7.5	.00495
Oakland	29	20	.01320	9	.00594
*Oakley	29	23	.01518	6	.00396
*Oakton	35	36.5	.02409	1.5	.00099
*Oakville	32	38	.02508	6–	.00396–
Oakwood	34	17	.01122	17	.01122
Oasis	32	29	.01914	3	.00198
Ocheyedan	34	5.5	.00363	28.5	.01881
Odebolt	32	14.5	.00957	17.5	.01155
Oelwein	32	24.5	.01617	7.5	.00495
Ogden	32	15	.00990	17	.01122
Okoboji	34	9	.00594	25	.01650
Olaf	34	14	.00924	20	.01320
*Olds	32	35	.02310	3–	.00198–
*Olin	35	29	.01914	6	.00396
Onawa	32	11	.00726	21	.01386
Oneida	35	26	.01716	9	.00594

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

[fol. 486] EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Onslow	35	32	.02112	3a	.00198
Ontario	32	16	.01056	16	.01056
Oran	32	20	.01320	12	.00792
Orange City	34	6	.00396	28	.01848
Orchard	37	19.5	.01287	17.5	.01155
*Orient	29	29	.01914	–	–
*Orillia	29	18.5	.01221	10.5	.00693
Orson	32	13.5	.00891	18.5	.01221
Ortonville	32	18	.01188	14	.00924
Osage	37	19.5	.01287	17.5	.01155
*Osceola	29	24.5	.01617	4.5	.00297
Osgood	34	9	.00594	25	.01650
*Oskaloosa	32	24.5	.01617	7.5	.00495
Ossian	37	24.5	.01617	12.5	.00825
*Otley	29	21	.01386	8	.00528
Oto	32	10	.00660	22	.01452
Otranto	37	16.5	.01089	20.5	.01353
Ottosen	34	10.5	.00693	23.5	.01551
*Ottumwa	29	29	.01914	–	–
Owasa	32	16	.01056	16	.01056
Owego	32	9	.00594	23	.01518
Oxford	32	29	.01914	3	.00198
*Oxford Jct.	35	33.5	.02211	1.5	.00099
*Oxford Mills	35	33.5	.02211	1.5	.00099
Oyens	32	7	.00462	25	.01650
*Pacific Jct.	29	18	.01188	11	.00726
Packard	34	17.5	.01155	16.5	.01089
*Page Centre	29	24.5	.01617	4.5	.00297
Palmer	34	10.5	.00693	23.5	.01551
Palm Grove	32	13.5	.00891	18.5	.01221
Palo	32	24.5	.01617	7.5	.00495
Palsville	34	14.5	.00957	19.5	.01287
Panama	32	18	.01188	14	.00924
Panora	32	16	.01056	16	.01056
Paralta	35	27.5	.01815	7.5	.00495
*Paris	29	30.5	.02013	1.5–	.00099–
Parkersburg	32	18	.01188	14	.00924
*Parnell	32	30.5	.02013	1.5	.00099
Paton	32	14	.00924	18	.01188
*Patterson	29	20.5	.01353	8.5	.00561
Paullins	34	6.5	.00429	27.5	.01815
*Payne	29	19.5	.01287	9.5	.00627
*Pekay	29	26	.01716	3	.00198
*Pella	29	23	.01518	6	.00396
Peosta	35	30.5	.02013	4.5	.00297
*Percival	29	19	.01254	10	.00660
*Percy	29	19.5	.01287	9.5	.00627
Perkins	34	5.5	.00363	28.5	.01881
*Perlee	32	33.5	.02211	1.5–	.00099–
Perry	32	16	.01056	16	.01056
Persia	32	18	.01188	14	.00924
*Peru	29	21	.01386	8	.00528
Petersburg	35	27.5	.01815	7.5	.00495
Peterson	34	7.5	.00495	26.5	.01749

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Petersville	35	35	.02310	–	–
Pickering	32	19.5	.01287	12.5	.00825
Pierson	32	9	.00594	23	.01518
*Pilot Grove	31	38.5	.02409	5.5–	.00363–
Pioneer	34	11.5	.00759	22.5	.01485
Piper	32	13.5	.00891	18.5	.01221
Pisgah	32	13.5	.00891	18.5	.01221
Plainfield	34	19	.01254	15	.00990
*Plano	29	32	.02112	3–	.00198–
*Plato	35	29	.01914	6	.00396
Pleasant Creek	35	31	.02046	4	.00264
*Pleasanton	29	30.5	.02013	1.5–	.00099–
*Pleasant Prairie	32	40	.02640	8–	.00528–
*Pleasant Valley	35	38	.02508	3–	.00198–
*Pleasantville	29	19.5	.01287	9.5	.00627
Plessis	34	6	.00396	28	.01848
[fol. 487]					
Plover	34	9.5	.00627	24.5	.01617
Plum Creek	37	13.5	.00891	23.5	.01551
Plymouth	37	15.5	.01023	21.5	.01419
Plymouth Jct.	37	15.5	.01023	21.5	.01419
Pocahontas	34	9.5	.00627	24.5	.01617
Polk City	32	17.5	.01155	14.5	.00957
Pomeroy	32	11	.00726	21	.01386
Popejoy	32	14.5	.00957	17.5	.01155
Portland	34	15.5	.01023	18.5	.01221
Portsmouth	32	18	.01188	14	.00924
Postville	37	24.5	.01617	12.5	.00825
Potter	32	20	.01320	12	.00792
Potters Siding	34	19	.01254	15	.00990
*Prairie City	29	19.5	.01287	9.5	.00627
Preparation	32	14	.00924	18	.01188
*Prescott	29	24.5	.01617	4.5	.00297
*Preston	35	38	.02508	3–	.00198–
Primghar	34	5.5	.00363	28.5	.01881
*Princeton	35	40	.02640	5–	.00330–
*Prole	29	19	.01254	10	.00660
*Promise City	29	32	.02112	3–	.00198–
*Pulaski	29	33.5	.02211	4.5–	.00297–
*Purdy	29	21.5	.01419	7.5	.00495
Quarry	32	19	.01254	13	.00858
Quimby	32	7.5	.00495	24.5	.01617
*Racine	32	15.5	.01023	16.5	.01089
Radcliffe	32	15.5	.01023	16.5	.01089
*Radcliffe Crossing	32	16.5	.01089	15.5	.01023
*Rainbow	32	38	.02508	6–	.00396
Rake	37	12.5	.00825	24.5	.01617
Raleigh	34	7.5	.00495	26.5	.01749
Ralston	32	15	.00990	17	.01122
Randalia	35	24.5	.01617	10.5	.00693
Randall	32	15.5	.01023	16.5	.01089
*Randolph	29	19.5	.01287	9.5	.00627
Rands	32	13.5	.00891	18.5	.01221

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Rathbun	29	29	.01914	–	–
Raymond	32	20	.01320	12	.00792
Readlyn	32	19.5	.01287	12.5	.00825
*Rector	29	21	.01386	8	.00528
*Redding	29	36.5	.02409	7.5–	.00495
Redfield	32	17	.01122	15	.00990
*Red Oak	29	19.5	.01287	9.5	.00627
Reeve	32	15.5	.01023	16.5	.01089
Reinbeck	32	18.5	.01221	13.5	.00891
Reinecker	32	14.5	.00957	17.5	.01155
Remsen	32	7	.00462	25	.01650
Renwick	34	13	.00858	21	.03186
Rhodes	32	18	.01188	14	.00924
Riceville	37	19	.01254	18	.01188
Richards	32	12.5	.00825	19.5	.01287
*Richland	32	33.5	.02211	1.5–	.00099–
Ricketts	32	15	.00990	17	.01122
Rider	32	18	.01188	14	.00924
Ridgeway	37	22	.01452	15	.00990
*Riggs	35	36.5	.02409	1.5–	.00099–
Rinard	32	13.5	.00891	18.5	.01221
Ringsted	37	14	.00924	23	.01518
Rippey	32	15	.00990	17	.01122
Ritter	34	5.5	.00363	28.5	.01881
*River Jct.	32	33.5	.02211	1.5–	.00099–
*Riverside	32	33.5	.02211	1.5–	.00099–
River Sioux	32	12.5	.00825	19.5	.01287
*Riverton	29	20.5	.01353	8.5	.00561
Roberts	32	13.5	.00891	18.5	.01221
Robertson	32	16	.01056	16	.01056
Robins	32	26	.01716	6	.00396
Rock Falls	34	15.5	.01023	18.5	.01221
Rockford	34	15.5	.01023	18.5	.01221
Rock Valley	34	7	.00462	27	.01782
Rockwell	34	15.5	.01023	18.5	.01221
Rockwell City	32	13.5	.00891	18.5	.01221
[fol. 488]					
Rodman	34	9.5	.00627	24.5	.01617
Rodney	32	10.5	.00693	21.5	.01419
Roelyn	32	13	.00858	19	.01254
Rogers	35	26	.01716	9	.00594
Roland	32	18	.01188	14	.00924
Rolfe	34	10	.00660	24	.01584
*Rome	32	35	.02310	3–	.00198–
*Roscoe	32	36.5	.02409	4.5–	.00297–
*Rosebrock	29	30.5	.02013	1.5–	.00099–
*Rose Hill	32	26	.01716	6	.00396
Ross	32	18	.01188	14	.00924
Rossie	34	7	.00462	27	.01782
Rowan	32	14	.00924	18	.01188
Rowley	32	24.5	.01617	7.5	.00495
Royal	34	7	.00462	27	.01782
*Rubio	32	35	.02310	3–	.00198–

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Rudd	34	16.5	.01089	17.5	.01155
*Runnells	29	18.5	.01221	10.5	.00693
*Russell	29	24.5	.01617	4.5	.00297
Rust	32	19	.01254	13	.00858
Ruthven	34	9	.00594	25	.01650
*Rutledge	32	29	.01914	3	.00198
Rutland	34	11.5	.00759	22.5	.01485
Ryan	35	26	.01716	9	.00594
St. Ansgar	37	18	.01188	19	.01254
St. Anthony	32	18	.01188	14	.00924
St. Benedict	34	15	.00990	19	.01254
*St. Charles	29	20	.01320	9	.00594
*St. Marys	29	19.5	.01287	9.5	.00627
St. Olaf	37	26	.01716	11	.00726
*Sabula	35	40	.02640	5–	.00330–
Sac City	32	11.5	.00759	20.5	.01353
*Salem	32	38	.02508	6–	.00396–
Salix	32	8.5	.00561	23.5	.01551
Sanborn	34	7	.00462	27	.01782
*Sand Prairie	31	38	.02508	7–	.00462–
*Sand Spring	35	30.5	.02013	4.5	.00297
*Sandusky	31	40	.02640	9–	.00594–
Santiago	32	18.5	.01221	13.5	.00891
*Sawyer	31	40	.02640	9–	.00594–
Saylor	32	18	.01188	14	.00924
Scarville	37	15.5	.01023	21.5	.01419
Schaller	32	11.5	.00759	20.5	.01353
Schleswig	32	15	.00990	17	.01122
*Scotch Grove	35	30.5	.02013	4.5	.00297
Scranton	32	15	.00990	17	.01122
*Scarboro	32	23	.01518	9	.00594
Secor	32	17	.01122	15	.00990
*Sedan	29	30.5	.02013	1.5–	.00099–
*Selection	29	26	.01716	3	.00198
*Selma	29	32	.02112	3–	.00198–
Seney	34	6.5	.00429	27.5	.01815
Sergeant Bluff	32	8	.00528	24	.01584
*Sewal	29	30.5	.02013	1.5–	.00099–
Sexton	34	13	.00858	12	.01386
*Seymour	29	29	.01914	–	–
*Shaffton	35	40	.02640	5–	.00330–
*Shambaugh	29	24.5	.01617	4.5	.00297
*Shannon City	29	26	.01716	3	.00198
*Sharpsburg	29	23	.01518	6	.00396
Sheffield	34	15.5	.01023	18.5	.01221
Shelby	29	20	.01320	9	.00594
Sheldahl	32	17	.01122	15	.00990
Sheldon	34	5.5	.00363	28.5	.01881
Shell Rock	32	18	.01188	14	.00924
Shellsburg	32	23	.01518	9	.00594
*Shenandoah	29	19.5	.01287	9.5	.00627
*Shepard	29	24.5	.01617	4.5	.00297
Sherman	32	16.5	.01089	15.5	.01023
Sherwood	32	13.5	.00891	18.5	.01221
Shipley	32	18	.01188	14	.00924
*Shopton	29	40	.02640	11–	.00726–

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

[fol. 489] EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Sibley	34	5	.00330	29	.01914
*Sidney	29	20.5	.01353	8.5	.00561
*Sigourney	32	27.5	.01815	4.5	.00297
*Silver City	29	17.5	.01155	11.5	.00759
Sinclair	32	18	.01188	14	.00924
Sioux Center	34	6	.00396	28	.01848
Sioux City	32	9	.00594	23	.01518
Sioux Rapids	34	8.5	.00561	25.5	.01683
Slater	32	16.5	.01089	15.5	.01023
Slifer	32	13	.00858	19	.01254
Sloan	32	9	.00594	23	.01518
Smithland	32	10.5	.00693	21.5	.01419
*Snodgrass	29	35	.02310	6-	.00396
Solberg	32	14	.00924	18	.01188
Soldier	32	14	.00924	18	.01188
*Solomon	29	18.5	.01221	10.5	.00693
Solon	32	27.5	.01815	4.5	.00297
Somers	32	12.5	.00825	19.5	.01287
South Amana	32	27.5	.01815	4.5	.00330
*South English	32	30.5	.02013	1.5	.00099
*South Ottumwa	29	29	.01914	-	-
*Spaulding	29	18.5	.02121	10.5	.00693
Specht's Ferry	35	31	.02046	4	.00264
Spencer	34	9	.00594	25	.01650
*Sperry	32	38	.02508	6-	.00396-
Spirit Lake	34	7.5	.00495	26.5	.01749
*Sprague ville	35	40	.02640	5-	.00330
Spring Fountain	34	19	.01254	15	.00990
*Spring Grove	32	42	.02772	10-	.00660-
*Spring Hill	29	19.5	.01287	9.5	.00627
Springville	35	29	.01914	6	.00396
Stacyville	37	17.5	.01155	19.5	.01287
Stanhope	32	14.5	.00957	17.5	.01155
Stanley	35	24.5	.01617	10.5	.00693
*Stanton	29	20.5	.01353	8.5	.00561
Stanwood	35	30.5	.02013	4.5	.00297
State Center	32	18	.01188	14	.00924
Steamboat Rock	32	17	.01122	15	.00990
*Stennett	29	21	.01386	8	.00528
*Steuben	29	32	.02112	3-	.00198-
Stevens	37	12	.00792	25	.01650
Stilson	34	13.5	.00891	20.5	.01353
*Stockport	32	35	.02310	3-	.00198-
Stockton	32	30.5	.02013	1.5	.00099
Stone City	35	29	.01914	6	.00396
Stonega	32	14.5	.00957	17.5	.01155
Storm Lake	32	8.5	.00561	23.5	.01551
Story City	32	18.5	.01221	13.5	.00891
Stout	32	18	.01188	14	.00924
Stowes Ranch	32	18	.01188	14	.00924
*Strahan	29	18.5	.01221	10.5	.00693
Stratford	32	14.5	.00957	17.5	.01155
Strawberry Point	35	24.5	.01617	10.5	.00693
Struble	34	6.5	.00429	27.5	.01815

* Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Stuart	29	20	.01320	9	.00594
*Sugar Creek	29	40	.02640	11-	.00726-
*Sully	32	27.5	.01815	4.5	.00297
Sulphur Springs	32	9	.00594	23	.01518
*Summerset	29	19	.01254	10	.00660
Summitt	32	16	.01056	16	.01056
Sumner	34	19	.01254	15	.00990
Sunbury	35	30.5	.02013	4.5	.00297
Superior	34	7.5	.00495	26.5	.01749
Sutherland	34	7	.00462	27	.01782
Swaledale	34	15	.00990	19	.01254
*Swan	29	19	.01254	10	.00660
Swanwood	32	18	.01188	14	.00924
Swea City	37	10.5	.00693	26.5	.01749
*Sweetland	32	36.5	.02409	4.5-	.00297-
Swisher	32	27.5	.01815	4.5	.00297
*Taintor	32	26	.01716	6	.00396
*Talmage	29	23	.01518	6	.00396
[fol. 490]					
Tama	00	20	.01320	12	.00792
Tara	32	12.5	.00825	19.5	.01287
*Teeds Grove	35	38	.02508	3-	.00198-
Templeton	32	16.5	.01089	15.5	.01023
*Tennant	32	16.5	.01089	15.5	.01023
Terril	34	7.5	.00495	26.5	.01749
*Thayer	29	26	.01716	3	.00198
Thompson	37	13	.00858	24	.01584
Thor	34	13	.00858	21	.01386
*Thornburg	32	29	.01914	3	.00198
Thornton	34	15	.00990	19	.01254
Thorpe	35	24.5	.01617	10.5	.00693
Thrall	34	13	.00858	21	.01386
Ticonic	32	11	.00726	21	.01386
Tiffin	32	29	.01914	3	.00198
*Tilé Works	35	40	.02640	5-	.00330
*Tilton	32	27.5	.01815	4.5	.00297-
*Tingley	29	26	.01716	3	.00198
Tipton	35	30.5	.02013	4.5	.00297
Titonka	37	15	.00990	22	.01452
*Titus	32	33.5	.02211	1.5-	.00099-
Toddville	32	24.5	.01617	7.5	.00495
*Togo	29	30.5	.02013	1.5-	.00099-
Toledo	32	20	.01320	12	.00792
Toeterville	37	17	.01122	20	.01320
*Toronto	35	33.5	.02211	1.5	.00099
*Tracy	29	23	.01518	6	.00396
Traer	32	19.5	.01287	12.5	.00825
*Trask	29	27.5	.01815	1.5	.00099
Tripoli	34	19	.01254	15	.00990
*Truro	29	21	.01386	8	.00528
Tuckers	32	18.5	.01221	13.5	.00891
Turin	32	11.5	.00759	10.5	.00693
*Turkey River	35	30.5	.02013	4.5	.00297

* Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Turner	32	21.5	.01419	10.5	.00693
*Tuskeege	29	32	.02112	3–	.00198–
*Udell	29	29	.01914	–	–
Ulmer	32	13.5	.00891	18.5	.01221
*Underwood	29	17	.01122	12	.00792
Union	32	17.5	.01155	14.5	.00957
*Unionville	29	29	.01914	–	–
Urbana	32	23	.01518	9	.00594
Urbandale	29	18.5	.01221	10.5	.00693
Ute	32	14	.00924	18	.01188
Vail	32	15	.00990	17	.01122
Valeria	32	18.5	.01221	13.5	.00891
*Valley Jct.	29	17.5	.01155	11.5	.00759
*Vancleve	32	24.5	.01617	7.5	.00495
Van Horne	32	21.5	.01419	10.5	.00693
Van Meter	29	18.5	.01221	10.5	.00693
*Van Wert	29	26	.01716	3	.00198
Varina	34	9.5	.00627	24.5	.01617
Ventura	34	14.5	.00957	19.5	.01287
Vera	32	26	.01716	6	.00396
*Verdi	32	33.5	.02211	1.5–	.00099–
Victor	32	24.5	.01617	7.5	.00495
*Viele	31	40	.02640	9–	.00594–
*Villisca	29	21	.01386	8	.00528
Vincent	32	13.5	.00891	18.5	.01221
Vining	32	20.5	.01353	11.5	.00759
Vinton	32	21.5	.01419	10.5	.00693
Viola	35	29	.01914	6	.00396
Voorhees	32	19	.01254	13	.00858
Wadleigh	32	13	.00858	19	.01254
Wagner	32	17	.01122	15	.00990
*Walcott	32	35	.02310	3–	.00198–
Wald	35	30.5	.02013	4.5	.00297
Walford	32	27.5	.01815	4.5	.00297
Walker	32	24.5	.01617	7.5	.00495
Waller	34	19	.01254	15	.00990
[fol. 491]					
Wallingford	34	8	.00528	26	.01716
Wall Lake	32	14.5	.00957	17.5	.01155
Walnut	29	20	.01320	9	.00594
*Wapello	32	35	.02310	3–	.00198–
*Wardville	32	24.5	.01617	7.5	.00495
Ware	34	9	.00594	25	.01650
*Warren	29	36.5	.02409	7.5–	.00495–
Washburn	32	20	.01320	12	.00792
*Washington	32	32	.02112	–	–
Washita	32	8	.00528	24	.01584
Waterloo	32	19	.01254	13	.00858
*Waterville	37	29	.01914	8	.00528
Watkins	32	24.5	.01617	7.5	.00495
*Waucoma	34	20.5	.01353	13.5	.00891
Waukee	32	16.5	.01089	15.5	.01023
*Waukon	37	29	.01914	8	.00528

* Rates apply only by truck. No rail rates published.
"–" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Waukon Jct.	37	27.5	.01815	9.5	.00627
*Waupeton	35	30.5	.02013	4.5	.00297
Waverly	32	19	.01254	13	.00858
*Wayland	32	33.5	.02211	1.5-	.00099-
Webb	34	9	.00594	25	.01650
*Webster	32	29	.01914	3	.00198
Webster City	32	14	.00924	18	.01188
*Weldon	29	26	.01716	3	.00198
*Wellman	32	33.5	.02211	1.5-	.00099-
Wellsburg	32	17	.01122	15	.00990
*Wellston	32	33.5	.02211	1.5-	.00099-
*Welton	35	35	.02310	-	-
Wesley	34	13	.00858	21	.01386
West Bend	34	10	.00660	24	.01584
West Branch	32	29	.01914	3	.00198
*West Burlington	32	40	.02640	8-	.00528-
West Charles City	34	19	.01254	15	.00990
*West Chester	32	32	.02112	-	-
*West Clinton	35	36.5	.02409	1.5-	.00099-
Westfield	34	8	.00528	25	.01716
West Ft. Dodge	32	13.5	.00891	18.5	.01221
Westgate	34	19	.01254	15	.00990
*West Grove	29	30.5	.02013	1.5-	.00099-
*West Keithsburg	32	40	.02640	8-	.00528-
West Le Mars	34	7	.00462	27	.01782
West Liberty	32	30.5	.02013	1.5	.00099
*Weston	29	16.5	.01089	12.5	.00825
*West Point	31	38	.02508	7-	.00462-
West Side	32	15	.00990	17	.01122
West Union	37	24.5	.01617	12.5	.00825
Westview	34	10	.00660	24	.01584
*Wever	32	42	.02772	10-	.00660-
*What Cheer	32	27.5	.01815	4.5	.00297
*Wheatland	35	32	.02112	3	.00198
Wheelerwood	37	15.5	.01023	21.5	.01419
*White Cloud	29	18	.01188	11	.00726
Whiting	32	10	.00660	22	.01452
Whittemore	34	9.5	.00627	24.5	.01617
Whitten	32	17.5	.01155	14.5	.00957
*Wick	29	19.5	.01287	9.5	.00627
Wightman	32	13.5	.00891	18.5	.01221
Wilke	32	15.5	.01023	16.5	.01089
Williams	32	15	.00990	17	.01122
*Williamsburg	32	30.5	.02013	1.5	.00099
*Williamson	29	23	.01518	6	.00396
*Willit	29	36.5	.02409	7.5-	.00495-
Wilton	32	30.5	.02013	1.5	.00099
*Winfield	32	35	.02310	3-	.00198-
Winklemans	32	15	.00990	17	.01122
Winslow	32	19	.01254	13	.00858
*Winterset	29	21.5	.01419	7.5	.00495
Winthrop	35	24.5	.01617	10.5	.00693
Wiota	29	20	.01320	9	.00594
Witmer	35	30.5	.02013	4.5	.00297

* Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

EXHIBIT 9—Continued

Destinations in Iowa	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Woden	37	14.5	.00957	22.5	.01485
Wolf	32	14	.00924	18	.01188
Woodbine	32	15	.00990	17	.01122
*Woodburn	29	26	.01716	3	.00198
[fol. 492]					
Woodward	32	16	.01056	16	.01056
Woolstock	32	14	.00924	18	.01188
*Worthington	35	30.5	.02013	4.5	.00297
*Wright	32	26	.01716	6	.00396
*Wyman	32	35	.02310	3-	.00198-
*Wyoming	35	32	.02112	3	.00198
Yale	32	16	.01056	16	.01056
*Yarmouth	32	36.5	.02409	4.5-	.00297-
Yetter	32	13.5	.00891	18.5	.01221
*Yorkshire	32	17.5	.01155	14.5	.00957
Young	32	27.5	.01815	14.5	.00957
*Zacharys	29	19.5	.01287	9.5	.00627
Zaneta	32	18.5	.01221	13.5	.00891
Zearing	32	18	.01188	14	.00924

* Rates apply only by truck. No rail rates published.
"-" Indicates rate higher from Rock Rapids than from Enid.

[fol. 493] EXHIBIT 10

Supplement No. 1—Issued June 20, 1941

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Ada	54	37	.02442	17	.01122
*Adolph	46	40	.02640	6	.00396
Airlie	36	7	.00462	29	.01914
Aitkins	52	32	.02112	20	.01320
Akeley	55	36	.02376	19	.01254
Albertville	39	20	.01320	19	.01254
*Allen Jct.	54	46	.03036	8	.00528
Alpha	36	8.5	.00561	27.5	.01815
Amiret	36	10	.00660	26	.01716
Andover	40	21	.01386	19	.01254
*Angora	58	48	.03168	10	.00660
Anoka	39	21	.01386	18	.01188
Appleton	43	18	.01188	25	.01650
Arco	40	10	.00660	30	.01980
*Aurora	54	46	.03036	8	.00528
Automba	52	32	.02112	20	.01320
Averell	54	34	.02244	20	.01320
Avoca	36	7	.00462	29	.01914
Backus	55	34	.02244	21	.01386
Bain	52	35	.02310	17	.01122
Barrows	47	25.5	.01683	21.5	.01419
Barry	47	22.5	.01485	24.5	.01617
Baxter	47	27.5	.01815	19.5	.01287
Beardsley	47	23	.01518	24	.01584
Becker	39	21	.01386	18	.01188
Belle Prairie	47	22.5	.01485	24.5	.01617
Bellingham	45	16	.01056	29	.01914
Bemidji	55	39.5	.02607	15.5	.01023
Bena	55	39.5	.02607	15.5	.01023
Benson	41	16	.01056	25	.01650
Bethel	40	22	.01452	18	.01188
Big Falls	64	48	.03168	16	.01056
Big Lake	39	21	.01386	18	.01188
Bingham Lake	36	7.5	.00495	28.5	.01881
*Biwabik	54	48	.03168	6	.00396
Blackduck	61	44	.02904	17	.01122
Borup	54	35.5	.02343	18.5	.01221
Brainerd	47	25.5	.01683	21.5	.01419
*Breda	51	44	.02904	7	.00462
Brewster	36	6.5	.00429	29.5	.01947
Brimson	51	44	.02904	7	.00462
*Brooklyn	54	46	.03036	8	.00528
Brookston	48	35	.02310	13	.00858
Browns Valley	47	25	.01650	22	.01452
Buhl	54	41	.02706	13	.00858
*Burnett	48	42	.02772	6	.00396
Burr	45	12	.00792	33	.02178
Burtrum	43	21.5	.01419	21.5	.01419
Butterfield	36	9	.00504	27	.01782
Callaway	54	33.5	.02211	20.5	.01353
Camp Ripley Jct.	47	22.5	.01485	24.5	.01617
Canby	45	11.5	.00759	33.5	.02211
Cass Lake	55	39	.02574	16	.01056

* Rates apply only by truck. No railrates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Cedar	40	21.5	.01419	18.5	.01221
Cedar Lake	52	32	.02112	20	.01320
Chandler	36	7	.00462	29	.01914
Chisholm	54	41	.02706	13	.00858
Clarkfield	37	12.5	.00825	24.5	.01617
Clear Lake	39	21	.01386	18	.01188
Clearwater	39	20	.01320	19	.01254
Clinton	47	20.5	.01353	26.5	.01749
Clontarf	43	17	.01122	26	.01716
Cohasset	55	39	.02574	16	.01056
*Colby	54	46	.03036	8	.00528
Cold Springs	39	19	.01254	20	.01320
[fol. 494]					
Comfrey	36	10	.00660	26	.01716
*Cook	58	50	.03300	8	.00528
Coon Creek	39	20	.01320	19	.01254
Corona	48	32	.02112	16	.01056
Correll	47	21	.01386	26	.01716
Cottonwood	36	11.5	.00759	24.5	.01617
Cromwell	48	32	.02112	16	.01056
Crow Wing	47	25.5	.01683	21.5	.01419
*Culver	48	42	.02772	6	.00396
Currie	36	11.5	.00759	24.5	.01617
Cushing	47	24.5	.01617	22.5	.01485
Cyrus	43	21.5	.01419	21.5	.01419
Danvers	43	17	.01122	26	.01716
*Darby Jct	52	44	.02904	8	.00528
Darling	47	22.5	.01485	24.5	.01617
Dayton	39	21	.01386	18	.01188
Deer River	55	39	.02574	16	.01056
Deerwood	52	31.5	.02079	20.5	.01353
DeGraff	41	16	.01056	25	.01650
Delft	36	8.5	.00561	27.5	.01815
Dorset	54	35	.02310	19	.01254
Dovray	36	11	.00726	25	.01650
Dundee	36	7	.00462	29	.01914
Dunnell	36	8.5	.00561	27.5	.01815
*Eagles Nest	58	48	.03168	10	.00660
East Lake	52	32	.02112	20	.01320
Edgerton	36	7	.00462	29	.01914
Elk River	39	21	.01386	18	.01188
*Embarrass	55	48	.03168	7	.00462
Enfield	39	20	.01320	19	.01254
*Eveleth	54	48	.03168	6	.00396
*Fairbanks	52	44	.02904	8	.00528
Farley	61	42	.02772	19	.01254
Federal Dam	55	38	.02508	17	.01122
Felton	54	35.5	.02343	18.5	.01221
Flensburg	43	21.5	.01419	21.5	.01419
Floodwood	52	36	.02376	16	.01056
Florence	36	8	.00528	28	.01848
Foley	40	21	.01386	19	.01254
*Forbes	52	44	.02904	8	.00528
Forest Lake	40	21	.01386	19	.01254
Fort Ripley	47	25.5	.01683	21.5	.01419

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Freeport	43	21.5	.01419	21.5	.01419
Fulda	36	7	.00462	29	.01914
Funkley	61	45	.02970	16	.01056
Gemmell	64	46.5	.03069	17.5	.01155
Georgetown	54	34	.02244	20	.01320
*Gilbert	54	48	.03168	6	.00396
Glenwood	43	20	.01320	23	.01518
Graceville	47	22	.01452	25	.01650
Grand Falls	67	48	.03168	19	.01254
*Grand Lake	48	42	.02772	6	.00396
Grand Rapids	55	39	.02574	16	.01056
Granite Falls	36	12.5	.00825	23.5	.01551
Green Valley	36	11	.00726	25	.01650
Grey Eagle	43	21.5	.01419	21.5	.01419
Guthrie	55	39	.02574	16	.01056
Hackensack	55	34	.02244	21	.01386
Hadley	36	7	.00462	29	.01914
Halstad	54	36.5	.02409	17.5	.01155
Hancock	43	18.5	.01221	24.5	.01617
Hanley Falls	36	12.5	.00825	23.5	.01551
Hardwick	34	5.5	.00363	28.5	.01881
*Harney	51	40	.02640	11	.00726
Hasty	39	20	.01320	19	.01254
Hatfield	36	7	.00462	29	.01914
Hawick	39	15	.00990	24	.01584
Hayden	47	27.5	.01815	19.5	.01287
Haydenville	44	12.5	.00825	31.5	.02079
[fol. 495]					
Hazel Run	37	12.5	.00825	24.5	.01617
Hendricks	41	10.5	.00692	30.5	.02013
Hendrum	54	35	.02310	19	.01254
Heron Lake	36	7	.00462	29	.01914
Hibbing	54	41	.02706	13	.00858
Hillman	47	26	.01716	21	.01386
Hines	61	42.5	.02805	18.5	.01221
Hitterdal	54	35	.02310	19	.01254
Holland	36	7	.00462	29	.01914
Holloway	43	18	.01188	25	.01650
*Hornby	52	44	.02904	8	.00528
Hugo	40	21	.01386	19	.01254
*Hull Jct.	52	44	.02904	8	.00528
Ihlem	36	6.5	.00429	29.5	.01947
International Falls	67	51	.03366	16	.01056
Iona Lake	36	7	.00462	29	.01914
*Iron Jct.	53	46	.03036	7	.00462
Ivanhoe	40	10	.00660	30	.01980
Iverson	48	32	.02112	16	.01056
Jackson	36	8	.00528	28	.01848
Jasper	36	6	.00396	30	.01980
Jeffers	36	9	.00594	27	.01782
Jenkins	55	30	.01980	25	.01650
Johnson	47	21	.01386	26	.01716
Kelliher	61	45	.02970	16	.01056
Kelly Lake	54	41	.02706	13	.00858
Kenneth	34	5.5	.00363	28.5	.01881

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Kerkhoven	40	15	.00990	25	.01650
Kimberly	52	32	.02112	20	.01320
Kinbrae	36	7	.00462	29	.01914
Klondyke	52	29.5	.01947	22.5	.01485
*Knife River	48	40	.02640	8	.00528
Kragnes	54	33	.02178	21	.01386
Lakefield	36	7.5	.00495	28.5	.01881
Lake Hubert	55	28.5	.01881	26.5	.01749
Lake Wilson	36	7	.00462	29	.01914
Lamberton	36	10	.00660	26	.01716
Lansford	52	32	.02112	20	.01320
Laporte	55	38.5	.02541	16.5	.01089
Lavinia	61	41.5	.02739	19.5	.01287
Lawler	52	32	.02112	20	.01320
Lennox	47	25.5	.01683	21.5	.01419
Lincoln	47	24.5	.01617	22.5	.01485
Lismore	34	6	.00396	28	.01848
Little Falls	43	21.5	.01419	21.5	.01419
Littlefork	67	51	.03366	16	.01056
Loerch	52	27.5	.01815	24.5	.01617
Lorne	36	12.5	.00825	23.5	.01551
Louisburg	45	16.5	.01089	28.5	.01881
Lynd	36	9	.00594	27	.01782
McGregor	52	32	.02112	20	.01320
*McKinley	54	48	.03168	6	.00396
*McNair	51	44	.02904	7	.00462
*Macon	54	46	.03036	8	.00528
Maple Grove	39	20	.01320	19	.01254
Margie	64	47	.03102	17	.01122
Marietta	45	12.5	.00825	32.5	.02145
Marshall	36	10	.00660	26	.01716
Melrose	43	21.5	.01419	21.5	.01419
Merrifield	55	27	.01782	28	.01848
Milan	41	21	.01386	20	.01320
Miloma	36	7	.00462	29	.01914
Minnesota	41	10	.00660	31	.02046
*Mitchell	54	46	.03036	8	.00528
Mizpah	64	46	.03036	18	.01188
Monterey	36	10	.00660	26	.01716
Montevideo	38	22	.01452	16	.01056
Monticello	39	20	.01320	19	.01254
Morris	43	19	.01254	24	.01584
Motley	47	27.5	.01815	19.5	.01287
*Mountain Iron	54	46	.03036	8	.00528
Mountain Lake	36	8.5	.00561	27.5	.01815
[fol. 496]					
*Munger	46	40	.02640	6	.00396
Murdock	41	15.5	.01023	25.5	.01683
Nakoda	67	51	.03366	16	.01056
Nary	55	39	.02574	16	.01056
Nassau	45	15.5	.01023	29.5	.01947
Nevis	54	35	.02310	19	.01254
New Prairie	43	21.5	.01419	21.5	.01419
Niswa	55	28.5	.01881	26.5	.01749
Northome	61	45	.02970	16	.01056

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Odessa	47	20.5	.01353	26.5	.01749
Ogema	54	35	.02310	19	.01254
Okabena	36	7	.00462	29	.01914
Onamia	47	27.5	.01815	19.5	.01287
Ormsby	36	10.5	.00693	25.5	.01683
*Orr	61	52	.03432	9	.00594
Ortonville	47	20.5	.01353	26.5	.01749
Osseo	39	20	.01320	19	.01254
Palisade	52	33.5	.02211	18.5	.01221
*Palmers	48	40	.02640	8	.00528
Parent	40	21	.01386	19	.01254
Paynesville	39	15.5	.01023	23.5	.01551
Pennock	40	15	.00990	25	.01650
Pequot	55	30	.01980	25	.01650
Perley	54	34	.02244	20	.01320
*Petit	54	48	.03168	6	.00396
Philbrook	47	26	.01716	21	.01386
Pillager	47	27.5	.01815	19.5	.01287
Pine River	55	31.5	.02079	23.5	.01551
Pipestone	36	7	.00462	29	.01914
Porter	44	10.5	.00693	33.5	.02211
Portage Lake	55	38	.02508	17	.01122
Princeton	40	21.5	.01419	18.5	.01221
*Proctor	46	40	.02640	6	.00396
*Rainy Jct.	54	48	.03168	6	.00396
Randall	47	23.5	.01551	23.5	.01551
Reading	34	6.5	.00429	27.5	.01815
Remer	55	38	.02508	17	.01122
*Reno (St. Louis Co.)	52	44	.02904	8	.00528
Revere	36	10	.00660	26	.01716
Richmond	39	18	.01188	21	.01386
*Ridge	55	48	.03168	7	.00462
*Robinson	58	50	.03300	8	.00528
Rockville	39	20	.01320	19	.01254
Rogers	39	20	.01320	19	.01254
Rosby	55	39	.02574	16	.01056
Roscoe	39	17	.01122	22	.01452
Rossburg	52	32	.02112	20	.01320
Russell	36	8.5	.00561	27.5	.01815
Ruthton	36	7.5	.00495	28.5	.01881
*Saginaw	48	40	.02640	8	.00528
St. Augusta	39	20	.01320	19	.01254
St. Cloud	39	21	.01386	18	.01188
St. James	36	10.5	.00693	25.5	.01683
Sanborn	36	10	.00660	26	.01716
Sauk Center	43	21.5	.01419	21.5	.01419
Sauk Rapids	39	21	.01386	18	.01188
Sawyer	48	32	.02112	16	.01056
*Sax	51	44	.02904	7	.00462
Schley	55	39	.02574	16	.01056
*Scott	54	44	.02904	10	.00660
Sedan	43	20	.01320	23	.01518
Sherburn	36	9.5	.00627	26.5	.01749
*Sherwood	54	46	.03036	8	.00528
Shovel Lake	52	37.5	.02475	14.5	.00957
*Silica	53	44	.02904	9	.00594

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Skibo	53	46	.03036	7	.00462
Slayton	36	7	.00462	29	.01914
South Hibbing	54	41	.02706	13	.00858
*Sparta	54	48	.03168	6	.00396
[fol. 497]					
Spaulding	43	21.5	.01419	21.5	.01419
Staples	47	27.5	.01815	19.5	.01287
Starbuck	43	21.5	.01419	21.5	.01419
Storden	36	10	.00660	26	.01716
*Summit	54	21	.01386	33	.02178
Swan River	52	37	.02442	15	.00990
Swanville	43	21.5	.01419	21.5	.01419
Swatara	52	36.5	.02409	15.5	.01023
Sylvan	47	27.5	.01815	19.5	.01287
Syre	54	37	.02442	17	.01122
*Taft	52	42	.02772	10	.00660
Tamarack	48	32	.02112	16	.01056
Tenstrike	61	42	.02772	19	.01254
Tobique	55	38	.02508	17	.01122
*Toivola	52	44	.02904	8	.00528
Topeka	47	24	.01584	23	.01518
*Tower	57	48	.03168	9	.00594
*Tower Jct.	57	48	.03168	9	.00594
Tracy	36	10	.00660	26	.01716
Trosky	36	6	.00396	30	.01980
Turtle River	61	42	.02772	19	.01254
Twin Valley	54	38	.02508	16	.01056
*Two Harbors	48	42	.02772	6	.00396
Ulen	54	35	.02310	19	.01254
Villard	43	21.5	.01419	21.5	.01419
Virginia	54	41	.02706	13	.00858
*Wahlsten	56	48	.03168	8	.00528
*Waldo	48	42	.02772	6	.00396
Walker	55	37	.02442	18	.01188
Walnut Grove	36	10	.00660	26	.01716
Warba	55	39	.02574	16	.01056
Ward Springs	43	21.5	.01419	21.5	.01419
Watson	40	21.5	.01419	18.5	.01221
Waubun	54	36.5	.02409	17.5	.01155
Westbrook	36	10.5	.00693	25.5	.01683
Westbury	54	32	.02112	22	.01452
Westport	43	21.5	.01419	21.5	.01419
Wheelock	47	27.5	.01815	19.5	.01287
*Whyte	53	44	.02904	9	.00594
Wilder	36	7	.00462	29	.01914
Wilmont	34	6.5	.00429	27.5	.01815
*Wilpen	54	46	.03036	8	.00528
Windom	36	7.5	.00495	28.5	.01881
*Winton	61	50	.03300	11	.00726
*Wolf	54	46	.03036	8	.00528
Woodstock	36	7	.00462	29	.01914
Wright	48	32	.02112	16	.01056
Wyoming	40	22	.01452	18	.01188
*Zim	52	44	.02904	8	.00528
Zimmerman	40	23	.01518	17	.01122

* Rates apply only by truck. No rail rates published.

Folio 498 EXHIBIT 10—Continued

Effective June 11, 1941

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Ada	50	37	.02442	13	.00858
Adams	37	17.5	.01155	19.5	.01287
*Adolph	47	40	.02640	7	.00462
Adrian	34	5.5	.00363	28.5	.01881
*Afton	37	20.5	.01353	17.5	.01155
Airlie	37	7	.00462	30	.01980
Aitkins	51	32	.02112	19	.01254
Akeley	50	36	.02376	14	.00924
Albany	42	21.5	.01419	20.5	.01353
Alberta	46	19.5	.01287	26.5	.01749
Albert Lea	37	15.5	.01023	21.5	.01419
Albertville	41	20	.01320	21	.01386
*Alborn	49	42	.02772	7	.00462
Alden	37	15.5	.01023	21.5	.01419
Aldrich	49	27.5	.01815	21.5	.01419
Alexandria	46	22	.01452	24	.01584
*Alger	49	42	.02772	7	.00462
*Allen Jct.	53	46	.03036	7	.00462
Almora	49	26.5	.01749	22.5	.01485
Alpha	37	8.5	.00561	28.5	.01881
*Altura	37	23	.01518	14	.00924
Alvarado	62	44	.02904	18	.01188
Amboy	37	13.5	.00891	23.5	.01551
Amiret	37	10	.00660	27	.01782
Andover	41	21	.01386	20	.01320
*Angora	59	48	.03168	11	.00726
Angus	62	42	.02772	20	.01320
Annandale	39	20	.01320	19	.01254
Anoka	41	21	.01386	20	.01320
Antlers Park	37	18	.01188	19	.01254
Appleton	42	18	.01188	24	.01584
Arco	43	10	.00660	33	.02178
Argyle	62	44	.02904	18	.01188
Arlington	37	14.5	.00957	22.5	.01485
Armstrong	37	15.5	.01023	21.5	.01419
Arthyde	51	32	.02112	19	.01254
Asbury	37	12.5	.00825	24.5	.01617
Ashby	49	27.5	.01815	21.5	.01419
Askov	41	28.5	.01881	12.5	.00825
Atwater	37	14.5	.00957	22.5	.01485
Audubon	51	33	.02178	18	.01188
*Augusta	37	19	.01254	18	.01188
*Aurora	53	46	.03036	7	.00462
Austin	37	17	.01122	20	.01320
Automba	51	32	.02112	19	.01254
Averill	50	34	.02244	16	.01056
Avoca	37	7	.00462	30	.01980
Avon	42	21.5	.01419	20.5	.01353
Backus	50	34	.02244	16	.01056
Badger	63	48	.03168	15	.00990
Bagley	57	42	.02772	15	.00990
Bain	51	35	.02310	16	.01056
Baker	51	33	.02178	18	.01188

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Balaton	37	10	.00660	27	.01782
Bald Eagle	37	21	.01386	16	.01056
*Barker	41	33	.02178	8	.00528
Barnesville	51	33	.02178	18	.01188
Barnum	41	30.5	.02013	10.5	.00693
Baroda	37	15.5	.01023	21.5	.01419
Barrett	46	23.5	.01551	22.5	.01485
Barrows	46	25.5	.01683	20.5	.01353
Barry	46	22.5	.01485	23.5	.01551
Battle Lake	49	28	.01848	21	.01386
Baxter	46	27.5	.01815	18.5	.01221
Bayport	37	20.5	.01353	16.5	.01089
Boy River	50	38	.02508	12	.00792
Beardsley	46	23	.01518	23	.01518
Beaver Creek	34	5	.00330	29	.01914
[fol. 499]					
Becker	41	21	.01386	20	.01320
Bejou	57	39	.02574	18	.01188
Belden	41	30.5	.02013	10.5	.00693
Belgrade	42	20	.01320	22	.01452
Belle Plaine	37	15.5	.01023	21.5	.01419
Belle Prairie	46	22.5	.01485	23.5	.01551
Bellingham	42	16	.01056	26	.01716
Beltrami	57	40	.02640	17	.01122
Belview	37	12.5	.00825	24.5	.01617
Bemidji	50	39.5	.02607	10.5	.00693
Bena	50	39.5	.02607	10.5	.00693
Benson	39	16	.01056	23	.01518
Beroun	41	26.5	.01749	14.5	.00957
Bertha	49	26	.01716	23	.01518
*Bethany	37	23	.01518	14	.00924
Bethel	41	22	.01452	19	.01254
Big Falls	63	48	.03168	15	.00990
Big Lake	41	21	.01386	20	.0132
Bingham Lake	37	7.5	.00495	29.5	.01947
*Birch	50	42	.02772	8	.00528
Bird Island	37	23	.01518	14	.00924
*Biscay	37	22	.01452	15	.00990
*Biwabik	53	48	.03168	5	.00330
Bixby	37	16	.01056	21	.01386
Blackduck	60	44	.02904	16	.01056
Blakely	37	15	.00990	22	.01452
Blackhoof	41	32	.02112	9	.00594
Blomkest	37	28.5	.01881	8.5	.00561
Blooming Prairie	37	16	.01056	21	.01386
Bloomington	37	19	.01254	18	.01188
Blue Earth	37	12.5	.00825	24.5	.01617
Bluffton	51	28.5	.01881	22.5	.01485
Bock	41	22	.01452	19	.01254
Bombay	37	18	.01188	19	.01254
*Bongards	37	20	.01320	17	.01122
Borup	50	35.5	.02343	14.5	.00957
Bovey	54	41	.02706	13	.00858
Bowlus	42	21.5	.01419	20.5	.01353

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Boyd	39	12.5	.00825	26.5	.01749
Braham	41	25	.01650	16	.01056
Brainerd	46	25.5	.01683	20.5	.01353
Brandon	46	26	.01716	20	.01320
Breckenridge	49	28.5	.01881	20.5	.01353
*Breda	47	44	.02904	3	.00198
Brewster	37	6.5	.00429	30.5	.02013
Bricelyn	37	13.5	.00891	23.5	.01551
Brimson	47	44	.02904	3	.00198
*Brooklyn	53	46	.03036	7	.00462
Brook Park	41	26.5	.01749	14.5	.00957
Brooks	60	42	.02772	18	.01188
Brookside	37	19	.01254	18	.01188
Brookston	46	35	.02310	11	.00726
Brooten	42	20	.01320	22	.01452
Browerville	49	24.5	.01617	24.5	.01617
Brownsdale	37	17	.01122	20	.0132
Browns Valley	46	25	.01650	21	.01386
*Brownsville	37	29	.01914	8	.00528
Brownton	37	23	.01518	14	.00924
Bruce	34	5	.00330	29	.01914
Bruno	41	29	.01914	12	.00792
Buffington	60	42	.02772	18	.01188
Buffalo	39	19.5	.01287	19.5	.01287
Buffalo Lake	37	23	.01518	14	.00924
Buhl	53	41	.02706	17	.01122
Burchard	37	10	.00660	27	.01782
*Burnett	46	42	.02772	4	.00264
*Burntside Lake	59	50	.03300	9	.00594
Burr	42	12	.00792	30	.01980
Burtrum	42	21.5	.01419	20.5	.01353
Butterfield	37	9	.00594	28	.01848
Byron	37	18	.01188	19	.01254
Cahill	37	18.5	.01221	18.5	.01221
*Calidonia	37	27.5	.01815	9.5	.00627
Callaway	50	33.5	.02211	16.5	.01089
[fol. 500]					
Calumet	54	41	.02706	13	.00858
Cambria	37	13.5	.00891	23.5	.01551
Cambridge	41	24	.01564	17	.01122
Campbell	49	26	.01716	23	.01518
Camp Ripley Jct.	46	22.5	.01485	23.5	.01551
Canby	42	11.5	.00759	30.5	.02013
*Cannon Falls	37	18.5	.01221	18.5	.01221
*Canton	37	23	.01518	14	.00924
Cardigan Jct.	37	19	.01254	18	.01188
Carlos	49	24	.01584	25	.01650
Carlton	41	32	.02112	9	.00594
Carthage Jct.	57	42	.02772	15	.00990
Carver	37	18	.01188	19	.01254
Castle Rock	37	17.5	.01155	19.5	.01287
Cass Lake	50	39	.02574	11	.00726
Cazenovia	40	7	.00462	33	.02178
Cedar	41	21.5	.01419	19.5	.01287

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Cedar Lake	51	32	.02112	19	.01254
Cedar Mills	37	26.5	.01749	10.5	.00693
Centre City	41	23	.01518	18	.01188
Ceylon	37	12	.00792	25	.01650
Chandler	37	7	.00462	30	.01980
*Chanhassin	37	19	.01254	18	.01188
Chaska	37	19	.01254	18	.01188
Chatfield	37	21	.01386	16	.01056
Chisago City	41	23	.01518	18	.01188
Chisholm	53	41	.02706	12	.00792
Chokio	46	20	.01320	26	.01716
Christiania	37	18	.01188	19	.01254
Cisco	60	42	.02772	18	.01188
Clara City	37	13	.00858	24	.01584
Claremont	37	17	.01122	20	.01320
Clarissa	49	24.5	.01617	24.5	.01617
Clarkfield	39	12.5	.00825	26.5	.01749
Clarks Grove	37	15.5	.01023	21.5	.01419
*Claybank	37	20	.01320	17	.01122
Clearbrook	60	42	.02772	18	.01188
Clear Lake	41	21	.01386	20	.01320
Clearwater	41	20	.01320	21	.01386
Clements	37	12	.00792	25	.01650
Cleveland	37	14	.00924	23	.01518
Climax	57	38	.02508	19	.01254
Clinton	46	20.5	.01353	25.5	.01683
Clitheral	49	28	.01848	21	.01386
Clontarf	42	17	.01122	25	.01650
Cloquet	41	33	.02178	8	.00528
Cloverton	41	29.5	.01947	11.5	.00759
Cobden	37	13	.00858	24	.01584
Cohasset	50	39	.02574	11	.00726
Cokato	37	17	.01122	20	.01320
*Colby	53	46	.03036	7	.00462
Cold Springs	41	19	.01254	22	.01452
Coleraine	54	41	.02706	13	.00858
Collegeville	42	21.5	.01419	20.5	.01353
*Collis	49	22	.01452	27	.01782
Cologne	37	19	.01254	18	.01188
Comfrey	37	10	.00660	27	.01782
Comstock	51	33	.02178	18	.01188
Conger	37	14	.00924	23	.01518
*Cook	57	50	.03300	7	.00462
Coon Creek	41	20	.01320	21	.01386
Copas	39	21.5	.01419	17.5	.01155
Corona	46	32	.02112	14	.00924
Correll	46	21	.01386	25	.01650
*Cort	54	46	.03036	8	.00528
*Corvuso	37	27	.01782	10	.00660
Cosmos	37	27	.01782	10	.00660
Cottonwood	37	11.5	.00759	25.5	.01683
Courtland	37	13	.00858	24	.01584
Cromwell	46	32	.02112	14	.00924
Crookston	57	40	.02640	17	.01122
Crow Wing	46	25.5	.01683	20.5	.01353

* Rates apply only by truck. No rail rates published.

[fol. 501] EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Crystal Bay	37	20	.01320	17	.01122
*Culver	46	42	.02772	4	.00264
Currie	37	11.5	.00759	25.5	.01683
Cushing	46	24.5	.01617	21.5	.01419
Cyrus	42	21.5	.01419	20.5	.01353
*Dahlgren	37	19	.01254	18	.01188
*Dakoto	37	27.5	.01815	9.5	.00627
Dale	51	33	.02178	18	.01188
Dalton	49	27.5	.01815	21.5	.01419
Danube	37	24.5	.01617	12.5	.00825
Danvers	42	17	.01122	25	.01650
*Darby Jct.	51	44	.02904	7	.00462
Darling	46	22.5	.01485	23.5	.01551
Darwin	37	16	.01056	21	.01386
Dassel	37	16.5	.01089	20.5	.01353
Davidson	57	42	.02772	15	.00990
Dawson	40	12.5	.00825	27.5	.01815
Dayton	41	21	.01386	20	.01320
Deer Creek	49	27.5	.01815	21.5	.01419
Deephaven	37	18	.01188	19	.01254
Deer River	50	39	.02574	11	.00726
Deerwiod	51	31.5	.02079	19.5	.01287
DeGraff	39	16	.01056	23	.01518
Delano	37	18.5	.01221	18.5	.01221
Delavan	37	13.5	.00891	23.5	.01551
Delft	37	8.5	.00561	28.5	.01881
Delhi	37	13.5	.00891	23.5	.01551
Delorme	60	42	.02772	18	.01188
Denham	51	33	.02178	18	.01188
Dennison	37	17.5	.01155	19.5	.01287
Dent	51	30.5	.02013	20.5	.01353
Detroit Lake	51	32	.02112	19	.01254
Dexter	37	18	.01188	19	.01254
Dilworth	51	33	.02178	18	.01188
Dodge Center	37	17.5	.01155	19.5	.01287
Donaldson	66	46	.03036	20	.01320
Donnelly	46	19.5	.01287	26.5	.01749
Doran	49	27	.01782	22	.01452
Dorothy	60	42	.02772	18	.01188
Dorset	50	35	.02310	15	.00990
*Douglas	37	19.5	.01287	17.5	.01155
*Dover	37	20.5	.01353	16.5	.01089
Dovray	37	11	.00726	26	.01716
Downer	51	33	.02178	18	.01188
Doyle	37	15.5	.01023	21.5	.01419
*Dresbach	37	27.5	.01815	9.5	.00627
Dudley	37	10	.00660	27	.01782
Duluth	41	33	.02178	8	.00528
*Duluth Jct.	37	21	.01386	16	.01056
Dumont	49	22	.01452	27	.01782
Dundas	37	17.5	.01155	19.5	.01287
Dundee	37	7	.00462	30	.01980
Dunnell	37	8.5	.00561	28.5	.01881
Duquette	41	30	.01980	11	.00726
Eagle Bend	49	26	.01716	23	.01518

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Eagle Lane	37	14	.00924	23	.01518
*Eagles Nest	59	48	.03168	11	.00726
East Grand Forks	57	42	.02772	15	.00990
East Lake	51	32	.02112	19	.01254
Easton	37	13.5	.00891	23.5	.01551
Ebro	57	42	.02772	15	.00990
Echo	37	12.5	.00825	24.5	.01617
Eden	37	17.5	.01155	19.5	.01287
Eden Prairie	37	19	.01254	18	.01188
Eden Valley	39	20	.01320	19	.01254
Edgerton	37	7	.00462	30	.01980
*Eggleston	37	23	.01518	14	.00924
Elbow Lake	46	25	.01650	21	.01386
Eldred	57	40	.02640	17	.01122
*Elevator Bay	37	20.5	.01353	16.5	.01089
Elgin	37	20.5	.01353	16.5	.01089
Elizabeth	51	29.5	.01947	21.5	.01419
Elko	37	16	.01056	21	.01386
Elk River	41	21	.01386	20	.01320
[fol. 502]					
Elkton	37	19	.01254	18	.01188
Ellendale	37	15.5	.01023	21.5	.01419
Ellsworth	34	5	.00330	29	.01914
*Elmer	51	44	.02904	7	.00462
Elmore	37	14	.00924	23	.01518
Elrosa	42	20	.01320	22	.01452
*Ely	60	50	.03300	10	.00660
*Elysian	37	15.5	.01023	21.5	.01419
*Embarrass	50	48	.03168	2	.00132
Empire	37	18.5	.01221	18.5	.01221
Enfield	41	20	.01320	21	.01386
Epsom	37	17.5	.01155	19.5	.01287
Erdahl	46	26	.01716	20	.01320
Erharts	51	31	.02046	20	.01320
Erskine	57	42	.02772	15	.00990
Essig	37	13.5	.00891	23.5	.01551
*Etter	37	23	.01518	14	.00924
Euclid	62	42	.02772	20	.01320
Evan	37	13.5	.00891	23.5	.01551
Evansville	46	26	.01716	20	.01320
*Eveleth	53	48	.03168	5	.00330
Everdell	49	28.5	.01881	20.5	.01353
Excelsior	37	17.5	.01155	19.5	.01287
*Eyota	37	20.5	.01353	16.5	.01089
Fairbanks	51	44	.02904	7	.00462
Fairfax	37	13.5	.00891	23.5	.01551
Fairmont	37	11.5	.00759	25.5	.01683
Fairbault	37	17.5	.01155	19.5	.01287
Farley	60	42	.02772	18	.01188
Farmington	37	17.5	.01155	19.5	.01287
Farwell	46	21	.01386	25	.01650
Federal Dam	50	38	.02508	12	.00792
Felton	50	35.5	.02343	14.5	.00957
Fergus Falls	49	28	.01848	21	.01386

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Fertile	57	40	.02640	17	.01122
*Finlayson	41	28	.01848	13	.00858
Fisher	57	42	.02772	15	.00990
Flaming	57	40	.02640	17	.01122
Flensburg	42	21.5	.01419	20.5	.01353
Floodwood	51	36	.02376	15	.00990
Florence	37	8	.00528	29	.01914
Foley	41	21	.01386	20	.01320
Forada	46	21.5	.01419	22.5	.01485
*Forbes	46	44	.02904	2	.00132
Forest Lake	41	21	.01386	20	.01320
Foreston	41	21	.01386	20	.01320
Fort Ripley	46	25.5	.01683	20.5	.01353
Fosston	57	42	.02772	15	.00990
*Fountain	37	20	.01320	17	.01122
Fox	66	48	.03168	18	.01188
Foxhome	49	28.5	.01881	20.5	.01353
Fox Lake	37	11	.00726	26	.01716
Franconia	41	24.5	.01617	16.5	.01089
Franklin	37	13.5	.00891	23.5	.01551
Frazee	51	32	.02112	19	.01254
Freeborn	37	15.5	.01023	21.5	.01419
*Freeburg	37	29	.01914	8	.00528
Freeman	57	42	.02772	15	.00990
Freeport	42	21.5	.01419	20.5	.01353
French	49	28.5	.01881	20.5	.01353
Fridley	41	20	.01320	21	.01386
Friesland	41	27.5	.01815	13.5	.00891
Frogner	41	32	.02112	9	.00594
*Frontenac	37	26	.01716	11	.00726
Frost	37	13.5	.00891	23.5	.01551
Fulda	37	7	.00462	30	.01980
Funkley	60	45	.02970	15	.00990
Garden City	37	12.5	.00825	24.5	.01617
Garfield	46	24.5	.01617	21.5	.01419
Garvin	37	10	.00660	27	.01782
[fol. 503]					
Gary	57	38	.02508	19	.01254
Gaylord	37	14	.00924	23	.01518
Gemmell	63	46.5	.03069	17.5	.01155
Genola	46	24	.01584	22	.01452
Georgetown	50	34	.02244	16	.01056
Georgeville	42	20	.01320	22	.01452
Ghent	38	10	.00660	28	.01848
Gibbon	37	13.5	.00891	23.5	.01551
*Gilbert	53	48	.03168	5	.00330
Gilfillan	37	13.5	.00891	23.5	.01551
Glencoe	37	21	.01386	16	.01056
Glenville	37	15.5	.01023	21.5	.01419
Glenwood	42	20	.01320	22	.01452
Gloster	37	19	.01254	18	.01188
Gluck	37	30.5	.02013	6.5	.00429
Glyndon	51	33	.02178	18	.01188
Gonvick	60	44	.02904	16	.01056

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Goodhue	37	19.5	.01287	17.5	.01155
Good Thunder	37	13.5	.00891	23.5	.01551
Gordon	37	15.5	.01023	21.5	.01419
Graceville	46	22	.01452	24	.01584
Grampian	66	50	.03300	16	.01056
Granada	37	11.5	.00759	21.5	.01419
Grand Falls	66	48	.03168	18	.01188
*Grand Lake	59	42	.02772	17	.01122
Grand Meadow	37	18	.01188	19	.01254
Grand Rapids	50	39	.02574	11	.00726
Grandy	41	24.5	.01617	16.5	.01089
Granite Falls	37	12.5	.00825	24.5	.01617
Grasston	41	26	.01716	15	.00990
Grayling	46	32	.02112	14	.00924
Greenbush	63	46	.03036	17	.01122
Green Isle	37	15.5	.01023	21.5	.01419
*Greenland	37	14.5	.00957	22.5	.01485
Green Valley	37	11	.00726	26	.01716
Greenwald	42	20	.01320	22	.01452
Grey Eagle	42	21.5	.01419	20.5	.01353
Grogan	37	10.5	.00693	26.5	.01749
Groningen	41	28	.01848	13	.00858
Grove City	37	15	.00990	22	.01452
Guckeen	37	12	.00792	25	.01650
Gully	60	44	.02904	16	.01056
Guthrie	50	39	.02574	11	.00726
Hackensack	50	34	.02244	16	.01056
Hadley	37	7	.00462	30	.01980
Hallock	66	48	.03168	18	.01188
Halma	66	48	.03168	18	.01188
Halstad	50	36.5	.02409	13.5	.00891
Hamburg	37	15.5	.01023	21.5	.01419
Hamel	38	19.5	.01287	18.5	.01221
Hampton	37	18	.01188	19	.01254
Hancock	42	18.5	.01221	23.5	.01551
Hanley Falls	37	12.5	.00825	24.5	.01617
Hanska	37	11	.00726	26	.01716
Hardwick	37	5.5	.00363	31.5	.02079
Harlis	41	31.5	.02079	9.5	.00627
*Harmony	37	23	.01518	14	.00924
*Harney	47	40	.02640	7	.00462
Harold	57	40	.02640	17	.01122
Harris	41	25.5	.01683	15.5	.01023
Hartland	37	15.5	.01023	21.5	.01419
*Hastings	37	21	.01386	16	.01056
Hasty	41	20	.01320	21	.01386
Hatfield	37	7	.00462	30	.01980
Haverhill	37	19.5	.01287	17.5	.01155
Hawick	41	15	.00990	26	.01716
Hawley	51	33	.02178	18	.01188
*Hay Creek	37	20.5	.01353	16.5	.01089
Hayden	46	27.5	.01815	18.5	.01221
Haydenville	42	12.5	.00825	29.5	.01947
Hayfield	37	17.5	.01155	19.5	.01287

* Rates apply only by truck. No rail rates published.

[fol. 504] EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Hayward	37	15.5	.01023	21.5	.01419
Hazel	60	42	.02772	18	.01188
Hazel Run	39	12.5	.00825	26.5	.01749
Heckman	37	10	.00660	27	.01782
Hector	37	23	.01518	14	.00924
Henderson	37	14.5	.00957	22.5	.01485
Hendricks	43	10.5	.00692	32.5	.02145
Hendrum	50	35	.02310	15	.00990
Henning	49	27.5	.01815	21.5	.01419
Henriette	41	26	.01716	15	.00990
Herman	46	22	.01452	24	.01584
Heron Lake	37	7	.00462	30	.01980
Hewitt	49	27.5	.01815	21.5	.01419
Hibbing	53	41	.02706	12	.00792
*Highland	50	42	.02772	8	.00528
Hillman	46	26	.01716	20	.01320
Hills	34	5	.00330	29	.01914
Hinckley	41	27	.01782	14	.00924
Hines	60	42.5	.02805	17.5	.01155
Hitterdal	50	35	.02310	15	.00990
Hixon	57	42	.02772	15	.00990
Hoffman	46	22.5	.01485	23.5	.01551
*Hokah	37	27.5	.01815	9.5	.00627
Holdingford	42	21.5	.01419	20.5	.01353
Holland	37	7	.00462	30	.01980
Hollandale	37	15.5	.01023	21.5	.01419
Holloway	42	18	.01188	24	.01584
Holman Jct.	54	41	.02706	13	.00858
Holt	63	44	.02904	19	.01254
Holyoke	41	31	.02046	10	.00660
*Homer	37	26	.01716	11	.00726
Hope	37	16	.01056	21	.01386
Hopkins	37	19	.01254	18	.01188
*Hornby	51	44	.02904	7	.00462
*Houston	37	26	.01716	11	.00726
Howard Lake	37	17.5	.01155	18.5	.01221
Hugo	41	21	.01386	20	.01320
*Hull Jct.	51	44	.02904	7	.00462
Humboldt	66	48	.03168	18	.01188
Huntley	37	12	.00792	25	.01650
Hutchinson	37	23	.01518	14	.00924
Ihlem	37	6.5	.00429	30.5	.02013
International Falls	66	51	.03366	15	.00990
Iona Lake	37	7	.00462	30	.01980
*Iron Jct.	52	46	.03036	6	.00396
Isanti	41	22.5	.01485	18.5	.01221
*Isinours	37	20.5	.01353	16.5	.01089
Isle	51	29	.01914	22.5	.01485
Ivanhoe	43	10	.00660	33	.02178
Iverson	46	32	.02112	14	.00924
Jackson	37	8	.00528	29	.01914
Janesville	37	14.5	.00957	22.5	.01485
Jasper	37	6	.00396	31	.02046
Jeffers	37	9	.00594	28	.01848
Jenkins	50	30	.01980	20	.01320

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Johnson	46	21	.01386	25	.01650
Jordan	37	16	.01056	21	.01386
Judge	37	19.5	.01287	17.5	.01155
Judson	37	13.5	.00891	23.5	.01551
Kanaranzi	34	5	.00330	29	.01914
Kandiyohi	37	14	.00924	23	.01518
Kankel	57	40	.02640	17	.01122
Karlstad	63	46	.03036	17	.01122
Kasota	37	13.5	.00891	23.5	.01551
Kasson	37	18	.01188	19	.01254
Kelliher	60	45	.02970	15	.00990
*Kellogg	37	27.5	.01815	9.5	.00627
Kelly Lake	53	41	.02706	12	.00792
*Kelsey	51	44	.02904	7	.00462
Kennedy	66	46	.03036	20	.01320
[fol. 505]					
Kenneth	37	5.5	.00363	31.5	.02079
Kensington	46	21.5	.01419	24.5	.01617
Kent	51	30	.01980	21	.01386
Kenyon	37	17.5	.01155	19.5	.01287
Kerkoven	39	15	.00990	24	.01584
Kerrick	41	29.5	.01947	11.5	.00759
Kettle River	45	32	.02112	13	.00858
Key West	60	42	.02772	18	.01188
Kiester	37	14	.00924	23	.01518
Kilkenny	37	15.5	.01023	21.5	.01419
Kimball	39	20	.01320	19	.01254
Kimberly	51	32	.02112	19	.01254
Kinbrae	37	7	.00462	30	.01980
Kingsdale	41	30	.01980	11	.00726
Klondyke	51	29.5	.01947	21.5	.01419
Klossner	37	13.5	.00891	23.5	.01551
*Knive River	59	40	.02640	19	.01254
Kragnes	50	33	.02178	17	.01122
Kutzer	49	27	.01782	22	.01452
*La Crescent	37	29	.01914	8	.00528
La Fayette	37	13.5	.00891	23.5	.01551
Lake Benton	40	8	.00528	32	.02112
*Lake City	37	24.5	.01617	12.5	.00825
Lake Crystal	37	12	.00792	25	.01650
Lake Elmo	37	20	.01320	17	.01122
Lakefield	37	7.5	.00495	29.5	.01947
Lake Hubert	50	28.5	.01881	22.5	.01485
*Lakeland	37	20.5	.01353	16.5	.01089
Lake Lillian	37	27.5	.01815	9.5	.00627
Lake Park	51	33	.02178	18	.01188
Lakeville	37	18	.01188	19	.01254
Lake Wilson	37	7	.00462	30	.01980
Lamberton	37	10	.00660	27	.01782
*La Moille	37	26	.01716	11	.00726
Lancaster	66	48	.03168	18	.01188
*Lanesboro	37	23	.01518	14	.00924
*Langdon	37	20.5	.01353	16.5	.01089
Lansford	51	32	.02112	19	.01254

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Lansing	37	16	.01056	21	.01386
Laporte	50	38.5	.02541	11.5	.00759
La Salle	37	10.5	.00693	26.5	.01749
Lavinia	60	41.5	.02739	18.5	.01221
Lawler	51	32	.02112	19	.01254
Lawndale	51	32	.02112	19	.01254
Le Center	37	14.5	.00957	22.5	.01485
Lee	60	42	.02772	18	.01188
*Lena	37	19	.01254	18	.01188
Lengby	57	42	.02772	15	.00990
Lennox	46	25.5	.01683	20.5	.01353
Leonard	60	42	.02772	18	.01188
Le Roy	37	19	.01254	18	.01188
Lester Prairie	37	23	.01518	14	.00924
Le Sueur	37	14.5	.00957	22.5	.01485
*Lewiston	37	23	.01518	14	.00924
Lewisville	37	12	.00792	25	.01650
Lincoln	46	24.5	.01617	21.5	.01419
Lindstrom	41	23	.01518	18	.01188
Lismore	37	6	.00396	31	.02046
Litchfield	37	15.5	.01023	21.5	.01419
Little Falls	42	21.5	.01419	20.5	.01353
Littlefork	66	51	.03366	15	.00990
Lockhart	57	38	.02508	19	.01254
Loerch	51	27.5	.01815	23.5	.01551
London	37	15.5	.01023	21.5	.01419
Long Lake	37	19	.01254	18	.01188
Long Prairie	49	23	.01518	26	.01716
Longs Siding	41	21.5	.01419	19.5	.01287
Lonsdale	37	15.5	.01023	21.5	.01419
Loretto	38	19.5	.01287	18.5	.01221
Lorne	37	12.5	.00825	24.5	.01617
Louisburg	42	16.5	.01089	25.5	.01683
Lowry	46	21	.01386	25	.01650
Lucan	37	10.5	.00693	26.5	.01749
Luverne	34	5	.00330	29	.01914
Lyle	37	17	.01122	20	.01320
Leota	37	7	.00462	30	.01980
[fol. 506]					
Lynd	37	9	.00594	28	.01848
*Lyndale	37	20.5	.01353	16.5	.01089
McGrath	51	30.5	.02013	20.5	.01353
McGregor	51	32	.02112	19	.01254
McIntosh	57	42	.02772	15	.00990
*McKinley	53	48	.03168	5	.00330
*McNair	47	44	.02904	3	.00198
*Mabel	37	24.5	.01617	12.5	.00825
*Macon	53	46	.03036	7	.00462
Madelia	37	11	.00726	26	.01716
Madison	42	12.5	.00825	29.5	.01947
*Madison Lake	37	14	.00924	23	.01518
Magnolia	34	5.5	.00363	28.5	.01881
Manhart	37	17.5	.01155	19.5	.01287
Mahnomen	57	38	.02508	19	.01254

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Mahtomedi	37	20.5	.01353	16.5	.01089
Mahtowa	41	31	.02046	10	.00660
Mallory	57	42	.02772	15	.00990
Manchester	37	15.5	.01023	21.5	.01419
Manitoba Jct.	51	33	.02178	18	.01188
Mankato	37	13.5	.00891	23.5	.01551
Manley	34	5	.00330	29	.01914
Manyaska	37	11.5	.00759	25.5	.01683
Maple	37	21	.01386	16	.01056
Maple Grove	41	20	.01320	21	.01386
Maple Island	39	21	.01386	18	.01188
Maple Lake	39	20	.01320	19	.01254
Maple Plain	37	18.5	.01221	18.5	.01221
Mapleton	37	13.5	.00891	24.5	.01617
Marble	54	41	.02706	13	.00858
Margie	63	47	.03102	16	.01056
Marietta	42	12.5	.00825	29.5	.01947
Marine	39	21.5	.01419	17.5	.01155
Markville	41	29	.01914	12	.00792
Marshall	37	10	.00660	27	.01782
Matawan	37	16	.01056	21	.01386
Mayer	37	21.5	.01419	15.5	.01023
Maynard	37	12.5	.00825	24.5	.01617
Mayville	37	17.5	.01155	19.5	.01287
*Mazeppa	37	19	.01254	18	.01188
*Meadowlands	51	44	.02904	7	.00462
Medford	37	17	.01122	20	.01320
Melby	49	26	.01716	23	.01518
Melrose	42	21.5	.01419	20.5	.01353
Melvin	57	40	.02640	17	.01122
Menahga	51	31	.02046	20	.01320
Mendota	37	18.5	.01221	18.5	.01221
Mentor	57	42	.02772	15	.00990
Meriden	37	15.5	.01023	21.5	.01419
Merriam	37	17	.01122	20	.01320
Merrifield	50	27	.01782	23	.01518
*Mesaba	54	46	.03036	8	.00528
Middle River	63	46	.03036	17	.01122
Milaca	41	21.5	.01419	19.5	.01287
Milan	43	21	.01386	22	.01452
Miloma	37	7	.00462	30	.01980
Milroy	37	10	.00660	27	.01782
Miltona	49	24.5	.01617	24.5	.01617
Minneapolis	37	19	.01254	18	.01188
*Minneiska	37	26	.01716	11	.00726
Minnesota	39	10	.00660	29	.01914
*Minnesota City	37	24.5	.01617	12.5	.00825
Minnesota Lake	37	13.5	.00891	13.5	.00891
Minnetonka Beach	37	20	.01320	17	.01122
*Mitchell	53	46	.03036	7	.00462
Mizpah	63	46	.03036	17	.01122
Monterey	37	10	.00660	27	.01782
Montevideo	37	22	.01452	15	.00990
Montgomery	37	15.5	.01023	21.5	.01419
Monticello	41	20	.01320	21	.01386

* Rates apply only by truck. No rail rates published.

[fol. 507] EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Montrose	37	18	.01188	19	.01254
Moorhead	51	33	.02178	18	.01188
Moose Lake	41	30	.01980	11	.00726
Mora	41	24	.01584	17	.01122
Morgan	37	13.5	.00891	23.5	.01551
Morris	42	19	.01254	23	.01518
Morristown	37	17.5	.01155	19.5	.01287
Motley	46	27.5	.01815	18.5	.01221
Morton	37	13.5	.00891	23.5	.01551
Mound	37	20.5	.01353	16.5	.01089
*Mound Prairie	37	26	.01716	11	.00726
*Mountain Iron	53	46	.03036	7	.00462
Mountain Lake	37	8.5	.00561	28.5	.01881
*Munger	47	40	.02640	7	.00462
Murdock	39	15.5	.01023	23.5	.01551
Muskoda	51	33	.02178	18	.01188
Nakoda	66	51	.03366	15	.00990
Nary	50	39	.02574	11	.00726
Nashua	49	26	.01716	23	.01518
Nassau	42	15.5	.01023	26.5	.01749
Nemadji	41	32	.02112	9	.00594
Nelson	46	22	.01452	24	.01584
Nerstrand	37	17.5	.01155	19.5	.01287
Nesbitt	37	18.5	.01221	18.5	.01221
Nevis	50	35	.02310	15	.00990
Newfolden	63	44	.02904	19	.01254
New Germany	37	23	.01518	14	.00924
*Newhouse	37	26	.01716	11	.00726
New London	39	14.5	.00957	24.5	.01617
New Munich	42	20	.01320	22	.01452
Newport	37	19	.01254	18	.01188
New Prague	37	15.5	.01023	21.5	.01419
New Prairie	42	21.5	.01419	20.5	.01353
New Richland	37	15.5	.01023	21.5	.01419
New Ulm	37	13.5	.00891	24.5	.01617
New York Mills	51	29	.01914	22	.01452
Nickerson	41	30.5	.02013	10.5	.00693
Nicollet	37	13.5	.00891	23.5	.01551
Nicollett Ave (Mpl)	37	19	.01254	18	.01188
Nielsville	57	38	.02508	19	.01254
Niswa	50	28.5	.01881	21.5	.01419
Noreross	46	23	.01518	23	.01518
North Branch	41	24.5	.01617	16.5	.01089
Northcote	66	48	.03168	18	.01188
Northfield	37	17.5	.01155	19.5	.01287
Northome	60	45	.02970	15	.00990
Northrop	37	12	.00792	25	.01650
Norwood	37	15.5	.01023	21.5	.01419
Noyes	66	50	.03300	16	.01056
Oakland	37	17	.01122	20	.01320
Oak Park	41	21	.01386	20	.01320
Odessa	46	20.5	.01353	25.5	.01683
Odin	37	10	.00660	27	.01782
Ogema	50	35	.02310	15	.00990
Ogilvie	41	22.5	.01485	18.5	.01221

*Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Okabena	37	7	.00462	30	.01980
Oklee	60	42	.02772	18	.01188
Olivia	37	24.5	.01617	12.5	.00825
Onamia	46	27.5	.01815	18.5	.01221
Orchard Gardens	37	18	.01188	19	.01254
Orchard Lake	37	18	.01188	19	.01254
Orleans	66	50	.03300	16	.01056
Ormsby	37	10.5	.00693	26.5	.01749
*Orr	60	52	.03432	8	.00528
Ortonville	46	20.5	.01353	25.5	.01683
Osakis	46	21.5	.01419	24.5	.01617
Oshawa	37	14	.00924	23	.01518
Oslo	62	44	.02904	18	.01188
fol. 508]					
Osseo	41	20	.01320	21	.01386
Ostrander	37	19	.01254	18	.01188
Otisco	37	15.5	.01023	21.5	.01419
Ottawa	37	14	.00924	23	.01518
Ottertail	51	29	.01914	22	.01452
Owatonna	37	17	.01122	20	.01320
Oxboro	37	19	.01254	18	.01188
Palisade	51	33.5	.02211	17.5	.01155
Palmer	37	19	.01254	18	.01188
*Palmers	59	40	.02640	19	.01254
Parent	41	21	.01386	20	.01320
Parkers Prairie	49	25	.01650	24	.01584
Park Rapids	51	33	.02178	18	.01188
Parkton	49	27.5	.01815	21.5	.01419
*Payne	51	42	.02772	9	.00594
Paynesville	41	15.5	.01023	25	.01650
Pease	41	21.5	.01419	19.5	.01287
Pelican Rapids	51	31	.02046	20	.01320
Pemberton	37	17	.01122	20	.01320
*Pengilly	54	46	.03036	8	.00528
Pennock	39	15	.00990	24	.01584
Pequot Lakes	50	30	.01980	20	.01320
Perault	60	42	.02772	18	.01188
Perham	51	30.5	.02013	20.5	.01353
*Perkins	37	24.5	.01617	12.5	.00825
Perley	50	34	.02244	16	.01056
*Peterson	37	23	.01518	14	.00924
*Petit	53	48	.03168	5	.00330
Philbrook	46	26	.01716	20	.01320
Pierson	37	29.5	.01947	7.5	.00495
Pillager	46	27.5	.01815	18.5	.01221
Pine City	41	26	.01716	15	.00990
Pine River	50	31.5	.02079	18.5	.01221
Pine Wood	60	40	.02640	20	.01320
Pipestone	37	7	.00462	30	.01980
Plainview	37	21	.01386	16	.01056
Plato	37	20	.01320	17	.01122
Plummer	60	42	.02772	18	.01188
Porter	42	10.5	.00693	31.5	.02079
Portage Lake	50	38	.02508	12	.00792

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Pratt	37	16	.01056	21	.01386
*Predmore	37	20	.01320	17	.01122
*Preston	37	21	.01386	16	.01056
Priam	37	13.5	.00891	23.5	.01551
Princeton	41	21.5	.01419	19.5	.01287
Prinsburg	37	29	.01914	8	.00528
Prior Lake	37	19	.01254	18	.01188
*Proctor	47	40	.02640	7	.00462
*Prosper	37	24.5	.01617	12.5	.00825
Quamba	41	25.5	.01683	15.5	.01023
Racine	37	19	.01254	18	.01188
Radium	62	44	.02904	18	.01188
*Rainy Jct.	53	48	.03168	5	.00330
Randall	46	23.5	.01551	22.5	.01485
Randolph	37	17.5	.01155	19.5	.01287
Rapidan	37	13.5	.00891	23.5	.01551
Raymond	37	13.5	.00891	23.5	.01551
Reading	37	6.5	.00429	30.5	.02013
Red Lake Falls	60	42	.02772	18	.01188
Redtop	51	29	.01914	12	.00792
Redwood	37	14	.00924	23	.01518
Redwood Falls	37	14	.00924	23	.01518
*Red Wing	37	20	.01320	17	.01122
Regal	42	20	.01320	22	.01452
Remer	50	38	.02508	12	.00792
*Reno (Houston Co.)	37	30.5	.02013	6.5	.00429
*Reno (St. Louis Co.)	46	44	.02904	2	.00132
Renova	37	19	.01254	18	.01188
Renville	37	24.5	.01617	12.5	.00825
Revere	37	10	.00660	27	.01782
Rice	42	21.5	.01419	20.5	.01353
[fol. 509]					
Richmond	41	18	.01188	23	.01518
Rich Valley	37	19	.01254	18	.01188
Richville	51	29.5	.01947	21.5	.01419
*Ridge	50	48	.03168	2	.00132
Robbinsdale	38	20	.01320	18	.01188
*Robinson	57	50	.03300	7	.00462
Rochester	37	19.5	.01287	17.5	.01155
Rock Creek	41	26	.01716	15	.00990
Rockford	38	19.5	.01287	18.5	.01221
Rockville	41	20	.01320	21	.01386
Rogers	41	20	.01320	21	.01386
*Rollins	51	44	.02904	7	.00462
Ronneby	41	21	.01386	20	.01320
Rosby	50	39	.02574	11	.00726
Roscoe	41	17	.01122	24	.01584
Roseau	66	50	.03300	16	.01056
Rose Creek	37	17.5	.01155	19.5	.01287
Roseland	37	29	.01914	8	.00528
Rosemont	37	18	.01188	19	.01254
Rossburg	51	32	.02112	19	.01254
Rothsay	51	30.5	.02013	20.5	.01353
Round Lake	35	6.5	.00429	27.5	.01815
Royalton	42	21.5	.01419	20.5	.01353

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Rush City	41	25.5	.01683	15.5	.01023
*Rushford	37	24.5	.01617	12.5	.00825
Rushmore	34	6	.00396	28	.01848
Ruskin	37	17.5	.01155	19.5	.01287
Russell	37	8.5	.00561	28.5	.01881
Rustad	51	33	.02178	18	.01188
Ruthton	37	7.5	.00495	29.5	.01947
Rutledge	41	28.5	.01881	12.5	.00825
Sabin	51	33	.02178	18	.01188
Sacred Heart	37	24.5	.01617	12.5	.00825
*Saginaw	59	40	.02640	19	.01254
St. Augusta	41	20	.01320	21	.01386
St. Bonifacius	37	20.5	.01353	16.5	.01089
*St. Charles	37	21	.01386	16	.01056
St. Clair	37	18	.01188	19	.01254
St. Cloud	41	21	.01386	20	.01320
St. Hiloire	60	42	.02772	18	.01188
St. James	37	10.5	.00693	16.5	.01089
St. Joseph	42	21.5	.01419	20.5	.01353
St. Louis Park	37	19	.01254	18	.01188
St. Paul	37	19	.01254	18	.01188
St. Peter	37	14	.00924	23	.01518
St. Vincent	66	50	.03300	16	.01056
Salol	66	52	.03432	14	.00924
Sanborn	37	10	.00660	27	.01782
Sandstone	41	27.5	.01815	13.5	.00891
Sargent	37	19	.01254	18	.01188
Sartell	42	21.5	.01419	20.5	.01353
Sauk Center	42	21.5	.01419	20.5	.01353
Sauk Rapids	41	21	.01386	20	.0132
Savage	37	18	.01188	19	.01254
Sawyer	46	32	.02112	14	.00924
*Sax	47	44	.02904	3	.00198
Scanlon	41	33	.02178	8	.00528
Schley	50	39	.02574	11	.00726
*Scott	53	44	.02904	8	.00528
Scribner	60	40	.02640	20	.01320
Seafrothe	37	11.5	.00759	25.5	.01683
Sebeka	51	29.5	.01947	21.5	.01419
Sedan	42	20	.01320	22	.01452
Shafers	41	24.5	.01617	16.5	.01089
Shakopee	37	17	.01122	10	.01320
Sherburn	37	9.5	.00627	27.5	.01815
Shelly	57	36.5	.02409	20.5	.01353
*Shenango	54	46	.03036	8	.00528
*Sherwood	53	46	.03036	7	.00462
Shevlin	57	42	.02772	15	.00990
*St. Thomas	37	19	.01254	18	.01188
[fol. 510]					
Shovel Lake	51	37.5	.02475	23.5	.01551
*Silica	52	44	.02904	8	.00528
Silver Lake	37	23	.01518	14	.00924
Simpson	37	19.5	.01287	17.5	.01155
*Skibo	52	46	.03036	6	.00396
Skyburg	37	17.5	.01155	19.5	.01287

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Slayton	37	7	.00462	30	.01980
Sleepy Eye	37	13.5	.00891	23.5	.01551
Smiths Mill	37	14	.00924	23	.01518
Salana	51	32	.02112	19	.01254
Solway	57	42	.02772	15	.00990
South Haven	39	20	.01320	19	.01254
South Hibbing	53	41	.02706	12	.00792
South St. Paul	37	19	.01254	18	.01188
*Sparta	53	48	.03168	5	.00330
Spaulding	42	21.5	.01419	20.5	.01353
Spring Park	37	20	.01320	17	.01122
Springfield	37	12.5	.00825	24.5	.01617
Spring Valley	37	19	.01254	18	.01188
*Spring Grove	37	26	.01716	11	.00726
Spicer	39	14.5	.00957	24.5	.01617
Stacy	41	23	.01518	18	.01188
Stanchfield	41	25	.01650	16	.01056
Stanton	37	17.5	.01155	19.5	.01287
Staples	46	27.5	.01815	18.5	.01221
Starbuck	42	21.5	.01419	20.5	.01353
Stephen	62	46	.03036	16	.01056
Stewart	37	23	.01518	14	.00924
Stewartsville	37	19	.01254	18	.01188
Stillwater	37	20.5	.01353	16.5	.01089
*Stockton	37	23	.01518	14	.00924
Storden	37	10	.00660	27	.01782
Strandquist	63	46	.03036	17	.01122
Strathcona	63	46	.03036	17	.01122
*Stubbs Bay	37	20	.01320	17	.01122
Sturgeon Lake	41	29.5	.01947	11.5	.00759
Sultan	66	50	.03300	16	.01056
*Summit	53	21	.01386	32	.02112
*Sumter	37	23	.01518	14	.00924
Swan River	51	37	.02442	14	.00924
Swanville	42	21.5	.01419	20.5	.01353
Swatara	51	36.5	.02409	14.5	.00957
Sylvan	46	27.5	.01815	18.5	.01221
Syre	50	37	.02442	13	.00858
*Taconite	54	48	.03168	6	.00396
*Taft	51	42	.02772	9	.00594
Tamarack	46	32	.02112	14	.00924
Taopi	37	19	.01254	18	.01188
Taunton	43	10	.00660	33	.02178
Taylors Falls	41	24.5	.01617	16.5	.01089
Tenney	49	27	.01782	22	.01452
Tenstrike	60	42	.02772	18	.01188
Thief River Falls	60	42	.02772	18	.01188
Thomson	41	33	.02178	8	.00528
Thorp	37	27	.01782	10	.00660
Tilden Jct.	57	42	.02772	15	.00990
Tintah	46	25	.01650	21	.01386
Tobique	50	38	.02508	12	.00792
*Toivola	51	44	.02904	7	.00462
Topeka	46	24	.01584	22	.01452
*Tower	56	48	.03168	8	.00528
*Tower Jct.	56	48	.03168	8	.00528

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa In Cents Cwt.	Refined rate from Champlin, Iowa In Cents per Gal.	Differential In Cents Cwt.	Differential In Cents per Gal.
Tracy	37	10	.00660	27	.01782
Trail	60	44	.02904	16	.01056
Traverse	37	14	.00924	23	.01518
Triumph	37	10.5	.00693	26.5	.01749
Trosky	37	6	.00396	31	.02046
*Trout Brook	37	20.5	.01353	16.5	.01089
Truman	37	12	.00792	25	.01650
Turtle River	60	42	.0277	18	.01188
[fol. 511]					
Twin Lakes	37	15.5	.01023	21.5	.01419
Twin Valley	50	38	.02508	12	.00792
*Two Harbors	46	42	.02772	4	.00264
Tyler	40	10	.00660	30	.01980
Ulen	50	35	.02310	15	.00990
Underwood	49	28	.01848	21	.01386
Utica	37	21.5	.01419	15.5	.01023
Vawter	46	23	.01518	23	.01518
Verdi	40	7.5	.00495	32.5	.02145
Vergas	51	32	.02112	19	.01254
Verndale	49	27.5	.01815	21.5	.01419
Vernon Center	37	13	.00858	24	.01584
Vesta	37	12	.00792	25	.01650
Victoria	37	17	.01122	20	.01320
Viking	62	44	.02904	18	.01188
Villard	42	21.5	.01419	20.5	.01353
Vining	49	28	.01848	21	.01386
Viola	37	20	.01320	17	.01122
Virginia	53	41	.02706	12	.00792
Vlosaty	37	17.5	.01155	19.5	.01287
*Wabasha	37	26	.01716	11	.00726
Wabasso	37	11.5	.00759	25.5	.01683
Waconia	37	16	.01056	21	.01386
Wadena	49	27.5	.01815	21.5	.01419
Wahkon	51	29	.01914	22	.01452
*Wahlsten	55	48	.03168	7	.00462
*Waldo	46	42	.02772	4	.00264
Waldorf	37	16.5	.01089	20.5	.01353
*Wales	51	44	.02904	7	.00462
Walker	50	37	.02442	13	.00858
Wallace	37	17.5	.01155	19.5	.01287
Wall Lake	49	28	.01848	21	.01386
Walters	37	13.5	.00891	23.5	.01551
Waltham	37	17.5	.01155	19.5	.01287
Walnut Grove	37	10	.00660	27	.01782
Wanamingo	37	18	.01188	19	.01254
Warba	50	39	.02574	11	.00726
Ward Springs	42	21.5	.01419	20.5	.01353
Warren	62	44	.02904	18	.01188
Warroad	66	52	.03432	14	.00924
Warsaw	37	17.5	.01155	19.5	.01287
Waseca	37	15.5	.01023	21.5	.01419
Waterford	37	17.5	.01155	19.5	.01287
Watertown	37	21.5	.01419	15.5	.01023
Waterville	37	15.5	.01023	21.5	.01419
Watkins	39	20	.01320	19	.01254

* Rates apply only by truck. No rail rates published.

EXHIBIT 10—Continued

Destinations in Minnesota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Watosco	49	28.5	.01881	20.5	.01353
Watson	37	21.5	.01419	15.5	.01023
*Watters	37	13.5	.00891	23.5	.01551
Waubun	50	36.5	.02409	13.5	.00891
Waverly	37	18	.01188	19	.01254
Wayzata	37	19	.01254	18	.01188
*Weaver	37	27.5	.01815	9.5	.00627
Webster	37	16	.01056	21	.01386
Wegdahl	37	22.5	.01485	14.5	.00975
*Welch	37	20	.01320	17	.01122
Welcome	37	11.5	.00759	25	.01650
Wells	37	13.5	.00891	23.5	.01551
Wendell	49	25	.01650	24	.01584
Westbrook	37	10.5	.00693	26	.01716
Westbury	50	32	.02112	18	.01188
West Concord	37	17.5	.01155	19.5	.01287
*West Duluth	41	33	.02178	8	.00528
Westport	42	21.5	.01419	20.5	.01353
West Union	46	21.5	.01419	24.5	.01617
*Whalan	37	21.5	.01419	15.5	.01023
Wheaton	49	23.5	.01551	25.5	.01683
Wheelock	46	27.5	.01815	18.5	.01221
*White Willow	37	19	.01254	18	.01188
*Whyte	52	44	.02904	8	.00528
Wilder	37	7	.00462	30	.01980
Willmar	37	14	.00924	23	.01518
Willow River	41	29	.01914	12	.00792
[fol. 512]					
Wilmont	37	6.5	.00429	30.5	.02013
*Wilpen	53	46	.03036	7	.00462
Wilson	37	19	.01254	18	.01188
Wilton	57	42	.02772	15	.00990
Windom	37	7.5	.00495	29.5	.01947
Winger	57	40	.02640	17	.01122
Winnebago	37	13.5	.00891	23.5	.01551
*Winona	37	24.5	.01617	12.5	.00825
Winsted	37	23	.01518	14	.00924
Winthrop	37	13.5	.00891	23.5	.01551
*Winton	60	50	.03300	10	.00660
Withrow	39	21	.01386	18	.01188
*Wolf	53	46	.03036	7	.00462
Wolverton	51	31.5	.02079	19.5	.01287
Woodlake	37	12.5	.00825	24.5	.01617
Woodstock	37	7	.00462	30	.01980
Worthington	34	6.5	.00429	27.5	.01815
Wrenshall	41	32	.02112	9	.00594
Wright	46	32	.02112	14	.00924
*Wykoff	37	19	.01254	18	.01188
Wyoming	41	22	.01452	19	.01254
Young American	37	15.5	.01023	21.5	.01419
*Zim	46	44	.02904	2	.00132
Zimmerman	41	23	.01518	18	.01188
Zumbra Heights	37	17	.01122	20	.01320
*Zumbro Falls	37	20.5	.01353	16.5	.01089
*Zumbrota	37	18.5	.01221	18.5	.01221

* Rates apply only by truck. No rail rates published.

[fol. 513] EXHIBIT 11

Supplement No. 2—Issued September 20, 1941

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Brown's Spur	50	27	.01782	23	.01518
Claire City	50	29	.01914	21	.01386
Corona	49	21	.01386	28	.01848
Dahlberg	51	29	.01914	22	.01452
Eden	51	29	.01914	22	.01452
Grenville	51	29	.01914	22	.01452
Hammers	50	27.5	.01815	22.5	.01485
Hillhead	51	29	.01914	22	.01452
Holmquist	46	19	.01254	27	.01782
Lake City	51	29	.01914	22	.01452
Marvin	46	20.5	.01353	25.5	.01683
Milbank	46	20.5	.01353	25.5	.01683
New Effington	50	27.5	.01815	22.5	.01485
Ortley	46	19.5	.01287	26.5	.01749
Peever	49	24	.01584	25	.01650
Rosholt	50	27	.01782	23	.01518
Roslyn	51	29	.01914	22	.01452
Sisseton	49	25.5	.01683	23.5	.01551
Summit	46	20.5	.01353	25.5	.01683
Twin Brooks	46	20.5	.01353	25.5	.01683
Veblen	51	29	.01914	22	.01452
Victor	50	27	.01782	23	.01518
Waubay	46	19	.01254	27	.01782
Webster	46	19	.01254	27	.01782
Wilmot	49	22	.01452	27	.01782

* Rates apply only by truck. No rail rates published.

[fol. 514] EXHIBIT 11—Continued

Supplement No. 1—Issued June 20, 1941

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Aberdeen	51	22.5	.01485	28.5	.01881
Agar	55	23	.01518	32	.02112
Altamont	45	13.5	.00891	31.5	.02079
Andover	50	19	.01254	31	.02046
Appleby	45	11.5	.00759	33.5	.02211
Armour	44	13	.00858	31	.02046
*Arrow[illegible]	73	57	.03762	16	.01056
Artas	63	42	.02772	21	.01386
[illegible]	42	8	.00528	34	.02244
[illegible]	36	6	.00396	30	.01980
[illegible]	53	24.5	.01320	28.5	.01881
B[illegible]	51	20.5	.01353	30.5	.02013
*Beebe	55	30	.01980	25	.01650
Belvidere	58	26	.01716	32	.02112
Bemis	45	12	.00792	33	.02178
Blunt	52	19.5	.01287	32.5	.02145
Bowdle	59	32	.02112	27	.01782
Box Elder	65	44	.02904	21	.01386
Britton	51	22.5	.01485	28.5	.01881
Burkmere	52	20.5	.01353	31.5	.02079
Canning	52	20.5	.01353	31.5	.02079
Canova	41	8	.00528	33	.02178
Capa	59	29	.01914	30	.01980
Caputa	65	40	.02640	25	.01650
Castlewood	45	11	.00726	34	.02244
Claymore	64	38	.02508	26	.01716
Clear Lake	45	11	.00726	34	.02244
Columbia	53	23	.01518	30	.01980
Conde	49	18	.01188	31	.02046
Corsica	44	13.5	.00891	30.5	.02013
Cottonwood	64	36.5	.02409	27.5	.01815
Crandell	49	16.5	.01089	32.5	.02145
Craven	55	30	.01980	25	.01650
Creston	65	40	.02640	25	.01650
Crocker	49	16	.01056	33	.02178
Dell Rapids	36	6.5	.00429	29.5	.01947
Delmont	43	12	.00792	31	.02046
Draper	54	20.5	.01353	33.5	.02211
Ducharme	64	45	.02970	19	.01254
Dupree	73	55	.03630	18	.01188
Duxbury	51	20	.01320	31	.02046
Eagle Butte	68	55	.03630	13	.00858
Eakin	55	20.5	.01353	34.5	.02277
Egan	36	7	.00462	29	.01914
Ellis	38	5.5	.00363	32.5	.02145
Eureka	59	34	.02244	25	.01650
Faith	73	57	.03762	16	.01056
Farmingdale	65	40	.02640	25	.01650
Faulkton	52	20	.01320	32	.02112
Ferney	51	19	.01254	32	.02112
*Firesteel	67	49	.03234	18	.01188
Flandreau	36	7	.00462	29	.01914
Foley	45	12.5	.00825	32.5	.02145

* Rates apply only by truck. No rail rates published.

EXHIBIT 11—Continued

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Ft. Pierre	56	24.5	.01617	31.5	.02079
Frederick	53	25.5	.01683	27.5	.01815
Gary	45	12.5	.00825	32.5	.02145
Geddes	44	14.5	.00957	29.5	.01947
Gettysburg	55	23	.01518	32	.02112
*Glencross	64	47	.03102	17	.01122
Glenham	59	36	.02376	23	.01518
Goodwin	45	13.5	.00891	31.5	.02079
Gorman	55	23	.01518	32	.02112
Grant	41	7.5	.00495	33.5	.02211
Greenway	59	35.5	.02343	23.5	.01551
*Grotna	59	32	.02112	27	.01782
Groton	51	20	.01320	31	.02046
Hanton	45	12.5	.00825	32.5	.02145
[fol. 515]					
Harrold	52	18.5	.01221	33.5	.02211
Hecla	53	25	.01650	28	.01848
Herreid	63	42	.02772	21	.01386
Highmore	49	18	.01188	31	.02046
Hillsview	59	32	.02112	27	.01782
Holabird	52	18	.01188	34	.02244
Holmquist	47	19	.01254	28	.01848
Hosmer	58	32	.02112	26	.01716
Houghton	53	24.5	.01617	28.5	.01881
Ipswich	55	30	.01980	25	.01650
Isabel	67	49	.03234	18	.01188
*James	51	20	.01320	31	.02046
Java	59	34	.02244	25	.01650
*Jeffrey	64	45	.02970	19	.01254
Kadoka	58	29	.01914	29	.01914
*Keldron	67	52	.03432	15	.00990
Kennebec	52	18	.01188	34	.02244
Kimball	44	14	.00924	30	.01980
Kranzburg	45	13.5	.00891	31.5	.02079
Lake Andes	44	14	.00924	30	.01980
*Landeau	64	38	.02508	26	.01716
Lane	44	13.5	.00891	30.5	.02013
Langford	51	21	.01386	30	.01980
*Lantry	73	55	.03630	18	.01188
*LaPlant	68	45	.02970	23	.01518
Lebanon	54	22	.01452	32	.02112
Lemmon	67	52	.03432	15	.00990
Leola	55	24	.01584	31	.02046
Lesterville	39.5	11	.00726	28.5	.01881
*Loyalton	55	20	.01320	35	.02310
Lyman	52	18	.01188	34	.02244
McIntosh	67	52	.03432	15	.00990
McLaughlin	64	45	.02970	19	.01254
Madra	63	35.5	.02343	27.5	.01815
*Mahto	64	45	.02970	19	.01254
Mansfield	51	19.5	.01287	31.5	.02079
Maple Leaf	64	48	.03168	16	.01056
Marvin	47	20.5	.01353	26.5	.01749
Mellette	51	18.5	.01221	32.5	.02145

* Rates apply only by truck. No rail rates published.

EXHIBIT 11—Continued

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Midland	59	30.5	.02043	28.5	.01881
Milbank	47	20.5	.01353	26.5	.01749
*Millard	55	20	.01320	35	.02310
Mina	55	26	.01716	29	.01914
Miranda	52	19	.01254	33	.02178
Mobridge	59	29	.01914	30	.01980
Moritz	45	13	.00858	32	.02112
*Morristown	67	52	.03432	15	.00990
*Mossman	68	45	.02970	23	.01518
Mt. Vernon	44	11.5	.00759	32.5	.02145
Murdo MacKenzie	54	21.5	.01419	32.5	.02145
Nahon	51	20	.01320	31	.02046
Newark	53	23	.01518	30	.01980
Northville	51	18.5	.01221	32.5	.02145
Nowlin	62	32	.02112	30	.01980
Oacoma	52	15.5	.01023	36.5	.02409
Okaton	58	23	.01518	35	.02310
Onida	55	21	.01386	34	.02244
Ordway	53	22.5	.01485	30.5	.02013
*Orient	55	38	.02508	17	.01122
Ortley	47	19.5	.01287	27.5	.01815
Owanka	65	42	.02772	23	.01518
*Parade	68	55	.03630	13	.00858
Peaks	36	5.5	.00363	30.5	.02013
Peever	50	24	.01584	26	.01716
Philip	64	35	.02310	29	.01914
Pierpont	51	20	.01320	31	.02046
Pierre	55	23	.01518	32	.02112
Plankinton	44	12.5	.00825	31.5	.02079
Platte	44	15.5	.01023	28.5	.01881
Pollock	63	44	.02904	19	.01254
[fol. 516]					
Powell	64	33.5	.02211	30.5	.02013
Presho	52	18.5	.01221	33.5	.02211
*Promise	64	45	.02970	19	.01254
Quinn	65	40	.02640	25	.01650
Randolph	51	19	.01254	32	.02112
Rapid City	65	44	.02904	21	.01386
Ravinia	44	14	.00924	30	.01980
*Red Elm	73	55	.03630	18	.01188
Reliance	52	16.5	.01089	35.5	.02343
Renner	36	5.5	.00363	30.5	.02013
Revillo	45	12.5	.00825	32.5	.02145
Richmond	54	23	.01518	31	.02046
*Ridgeview	68	45	.02970	23	.01518
Rockham	52	18	.01188	34	.02244
Roscoe	55	32	.02112	23	.01518
Rosseau	55	21	.01386	34	.02244
Rudolph	51	20.5	.01353	30.5	.02013
Scenic	65	36.5	.02409	28.5	.01881
Selby	59	34	.02244	25	.01650
Seneca	52	21.5	.01419	30.5	.02013
Sherman	36	5.5	.00363	30.5	.02013
Sisseton	50	25.5	.01683	24.5	.01617

* Rates apply only by truck. No rail rates published.

EXHIBIT 11—Continued

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Sitka	59	36	.02376	23	.01518
Spain	51	22.5	.01485	28.5	.01881
Stamford	58	26	.01716	32	.02112
Stickney	44	14	.00924	30	.01980
Strandsburg	45	12.5	.00825	32.5	.02145
Stratford	51	19.5	.01287	31.5	.02079
*Stratton	64	45	.02970	19	.01254
Summit	47	20.5	.01353	26.5	.01749
Tabor	39.5	12	.00792	27.5	.01815
Teton	59	24.5	.01617	34.5	.02277
Thomas	45	12	.00792	33	.02178
Thunder Hawk	67	52	.03432	15	.00990
Timber Lake	64	47	.03102	17	.01122
Trail City	64	45	.02970	19	.01254
Trent	36	6.5	.00429	29.5	.01947
Troy	45	12.5	.00825	32.5	.02145
Twin Brooks	47	20.5	.01353	26.5	.01749
Underwood	65	44	.02904	21	.01386
Utica	39.5	10	.00660	29.5	.01947
Van Metre	59	27.5	.01815	31.5	.02079
Verdon	51	18.5	.01221	32.5	.02145
*Virginia	64	45	.02970	19	.01254
Vivian	54	19	.01254	35	.02310
*Wakpala	64	45	.02970	19	.01254
*Walker	64	45	.02970	19	.01254
Wall	65	40	.02640	25	.01650
Warner	51	21.5	.01419	29.5	.01947
Wasta	65	42	.02772	23	.01518
Watauga	67	52	.03432	15	.00990
Watertown	45	12.5	.00825	32.5	.02145
Waubay	47	19	.01254	28	.01848
Waverly	45	12.5	.00825	32.5	.02145
Webster	47	19	.01254	28	.01848
Wendte	59	26	.01716	33	.02178
Wessington Springs	44	13.5	.00891	30.5	.02013
Westport	53	23.5	.01551	29.5	.01947
Wetonka	55	23.5	.01551	31.5	.02079
*White Butte	69	52	.03432	17	.01122
White Lake	44	13.5	.00891	30.5	.02013
*Winship	53	27	.01782	26	.01716
Zell	52	17.5	.01155	34.5	.02277

* Rates apply only by truck. No rail rates published.

[fol. 517] EXHIBIT 11—Continued

Rates Effective June 11, 1941

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Aberdeen	49	22.5	.01485	26.5	.01749
Adelaide	49	18	.01188	31	.02046
Agar	53	23	.01518	30	.01980
Ahnberg	43	8.5	.00561	34.5	.02277
Akaska	50	26	.01716	24	.01584
Albee	47	15	.00990	32	.02112
Alcester	35	7.5	.00495	27.5	.01815
Alexandria	40	9.5	.00627	30.5	.02013
Alpena	43	13.5	.00891	29.5	.01947
Altamont	42	13.5	.00891	28.5	.01881
Amherst	53	27	.01782	26	.01716
Andover	49	19	.01254	30	.01980
Appleby	42	11.5	.00759	30.5	.02013
Argonne	43	9.5	.00627	33.5	.02211
Arlington	43	9	.00594	34	.02244
Armour	42	13	.00858	29	.01914
*Arrowhead	71	57	.03762	14	.00924
Artas	62	42	.02772	20	.01320
Artesian	43	10.5	.00693	32.5	.02145
Ashton	47	17.5	.01155	29.5	.01947
Astoria	43	11	.00726	32	.02112
Athol	47	17.5	.01155	29.5	.01947
Aurora	39	8	.00528	31	.02046
Avon	40	12	.00792	28	.01848
Badger	43	10	.00660	33	.02178
Baltic	37	6	.00396	31	.02046
Bancroft	47	14	.00924	33	.02178
Barnard	52	24.5	.01320	27.5	.01815
Bath	49	20.5	.01353	28.5	.01881
*Beebe	53	30	.01980	23	.01518
Belle Fourche	69	48	.03168	21	.01386
Belvidere	56	26	.01716	30	.01980
Bemis	42	12	.00792	30	.01980
Benclare	34	5	.00330	29	.01914
Beresford	35	8	.00528	27	.01782
Black Hawk	67	44	.02904	23	.01518
Blunt	51	19.5	.01287	31.5	.02079
*Bonesteel	47	27.5	.01815	19.5	.01287
Bonilla	47	15	.00990	32	.02112
Boogé	34	5	.00330	29	.01914
Bowdle	57	32	.02112	25	.01650
Box Elder	63	44	.02904	19	.01254
Bradley	47	15.5	.01023	31.5	.02079
Brandon	34	5	.00330	29	.01914
Brandt	43	10	.00660	33	.02178
Brentford	49	18	.01188	31	.02046
Bridgewater	40	8	.00528	32	.02112
Bristol	47	18	.01188	29	.01914
Britton	47	22.5	.01485	24.5	.01617
Broadland	47	14.5	.00957	32.5	.02145
Brookings	43	8	.00528	35	.02310
*Brown's Spur	51	27	.01782	24	.01584
Bruce	43	8.5	.00561	34.5	.02277

* Rates apply only by truck. No rail rates published.

EXHIBIT 11—Continued

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Bryant	43	11.5	.00759	31.5	.02079
*Buena Vista	64	50	.03301	14	.00924
*Buffalo Gap	64	48	.03168	16	.01056
Burbank	34	10	.00660	24	.01584
Burch	53	27	.01782	26	.01716
*Burke	49	29	.01914	20	.01320
Burkmere	51	20.5	.01353	30.5	.02013
Bushnell	43	8	.00528	40	.02640
Butler	47	17	.01122	30	.01980
[fol. 518]					
Canistota	38	7.5	.00495	30.5	.02013
Canning	51	20.5	.01353	30.5	.02013
Canova	39	8	.00528	31	.02046
Canton	34	7	.00462	27	.01782
Capa	57	29	.01914	28	.01848
Caputa	63	40	.02640	23	.01518
Carthage	43	10.5	.00693	32.5	.02145
Castlewood	42	11	.00726	31	.02046
Cavour	43	13	.00858	30	.01980
Centerville	35	9	.00594	26	.01716
Chamberlain	47	15.5	.01023	31.5	.02079
Chancellor	38	7.5	.00495	30.5	.02013
Chelsea	51	18.5	.01221	32.5	.02145
Chester	38	6.5	.00429	31.5	.02079
Claire City	51	29	.01914	22	.01452
Claremont	53	27	.01782	26	.01716
Clark	47	14	.00924	33	.02178
Claymore	42	38	.02508	24	.01584
Clear Lake	42	11	.00726	31	.02046
Colman	38	7.5	.00495	30.5	.02013
Colome	51	33.5	.02211	17.5	.01155
Colton	38	6.5	.00429	31.5	.02079
Columbia	52	23	.01518	29	.01914
Conata	63	33.5	.02211	29.5	.01947
Conde	46	18	.01188	28	.01848
Corona	51	21	.01386	30	.01980
Corsica	42	13.5	.00891	28.5	.01881
Corson	34	5.5	.00363	28.5	.01881
Cottonwood	62	36.5	.02409	25.5	.01683
Crandell	46	16.5	.01089	29.5	.01947
Crandon	47	15.5	.01023	31.5	.02079
Craven	53	30	.01980	23	.01518
Cresbard	47	18.5	.01221	28.5	.01881
Creston	63	40	.02640	23	.01518
Crocker	46	16	.01056	30	.01980
Crooks	38	6	.00396	32	.02112
Custer	65	48	.03168	17	.01122
Cuthbert	43	12.5	.00825	40.5	.02673
Dahlberg	52	29	.01914	23	.01518
Dallas	50	32	.02112	18	.01188
Dante	40	13	.00858	27	.01782
Davis	35	7.5	.00495	27.5	.01815
Deadwood	67	46	.03036	21	.01386
Dell Rapids	37	6.5	.00429	30.5	.02013

* Rates apply only by truck. No rail rates published.

EXHIBIT 11—Continued

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Delmont	42	12	.00792	30	.01980
Dempster	43	10	.00660	33	.02178
De Smet	43	11	.00726	32	.02112
Dimock	40	13	.00858	27	.01782
Doland	47	16.5	.01089	30.5	.02013
Draper	52	20.5	.01353	31.5	.02079
Ducharme	62	45	.02970	17	.01122
Dupree	71	55	.03630	16	.01056
Duxbury	49	20	.01320	29	.01914
Eagle Butte	66	55	.03630	11	.00726
Eakin	53	20.5	.01353	32.5	.02145
East Sioux Falls	34	5	.00330	29	.01914
Eden	52	29	.01914	23	.01518
Edgemont	64	52	.03432	12	.00792
Egan	37	7	.00462	30	.01980
Elkton	40	7.5	.00495	32.5	.02145
Elk Point	34	9	.00594	25	.01650
Ellis	40	5.5	.00363	34.5	.02277
Elrod	47	14	.00924	33	.02178
Emery	40	9	.00594	31	.02046
Englewood	67	48	.03168	19	.01254
Erskine	64	48	.03168	16	.01056
Erwin	43	11	.00726	32	.02112
Esmond	43	14	.00726	32	.02112
Estelline	43	9.5	.00627	33.5	.02211
Ethan	40	13	.00858	27	.01782
Eureka	57	34	.02244	23	.01518
[fol. 519]					
*Fairburn	65	46	.03036	19	.01254
*Fairfax	46	26	.01716	20	.01320
Fairview	34	7	.00462	27	.01782
Faith	71	57	.03762	14	.00924
Farmer	40	8.5	.00561	31.5	.02079
Farmingdale	63	40	.02640	23	.01518
Faulkton	51	20	.01320	31	.02046
Fedora	43	10	.00660	33	.02178
Ferney	49	19	.01254	30	.01980
*Firesteel	65	49	.03234	16	.01056
Flandreau	37	7	.00462	30	.01980
Florence	47	14.5	.00957	32.5	.02145
Foley	42	12.5	.00825	29.5	.01947
Forestburg	43	11.5	.00759	31.5	.02079
Ft. Pierre	50	24.5	.01617	25.5	.01683
Frankfort	47	16.5	.01089	30.5	.02013
Frederick	52	25.5	.01683	26.5	.01749
Freeman	40	7.5	.00495	32.5	.02145
Fruitdale	69	48	.03168	21	.01386
Fulton	40	9	.00594	31	.02046
Garden City	47	14.5	.00957	32.5	.02145
Garretson	34	5	.00330	29	.01914
Gary	42	12.5	.00825	29.5	.01947
Gayville	35	10	.00660	25	.01650
Geddes	42	14.5	.00957	27.5	.01815
Gettysburg	53	23	.01518	30	.01980

*Rates apply only by truck. No rail rates published.

EXHIBIT 11—Continued

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Glencross	62	47	.03102	15	.00990
Glenham	57	36	.02376	21	.01386
Goodwin	42	13.5	.00891	28.5	.01881
Gorman	53	23	.01518	30	.01980
Grant	39	7.5	.00495	31.5	.02079
Greenway	57	35.5	.02343	21.5	.01419
*Gregory	49	30.5	.02013	18.5	.01221
Grenville	52	29	.01914	23	.01518
*Gretna	57	32	.02112	25	.01650
Groton	49	20	.01320	29	.01914
Grover	47	12.5	.00825	34.5	.02277
Hammers	51	27.5	.01815	23.5	.01551
Hanton	42	12.5	.00825	29.5	.01947
Harrisburg	34	7	.00462	27	.01782
Harrold	51	18.5	.01221	32.5	.02145
Hartford	38	6	.00396	32	.02112
Hayti	43	11.5	.00759	31.5	.02079
Hazel	47	12.5	.00825	34.5	.02277
Hecla	52	25	.01650	27	.01782
Henry	47	14	.00924	33	.02178
*Hermosa	65	44	.02904	21	.01386
Herreid	62	42	.02772	20	.01320
*Herrick	48	27.5	.01815	20.5	.01353
Hetland	43	10	.00660	33	.02178
Highmore	46	18	.01188	28	.01848
*Hill City	65	46	.03036	19	.01254
Hillhead	52	29	.01914	23	.01518
Hillsview	57	32	.02112	25	.01650
Hitchcock	47	14.5	.00957	32.5	.02145
Holabird	51	18	.01188	33	.02178
Holmquist	49	19	.01254	30	.01980
Hooker	38	10	.00660	28	.01848
Hosmer	57	32	.02112	25	.01650
*Hot Springs	64	48	.03168	16	.01056
Houghton	52	24.5	.01617	27.5	.01815
Hoven	50	23	.01518	27	.01782
Howard	43	9.5	.00627	33.5	.02211
Hudson	34	7	.00462	27	.01782
*Huffton	53	27	.01782	26	.01716
Humboldt	38	6.5	.00429	31.5	.02079
Huntimer	38	6.5	.00429	31.5	.02079
Hurley	38	10	.00660	28	.01848
Huron	43	14	.00924	29	.01914
Imlay	63	1.5	.02409	26.5	.01749
Interior	63	32	.02112	31	.02046
Ipswich	53	30	.01980	23	.01518
[fol. 520]					
Irene	35	9	.00594	26	.01716
Iroquois	43	12	.00792	31	.02046
Isabel	65	49	.03234	16	.01056
*James	49	20	.01320	29	.01914
Java	57	34	.02244	23	.01518
Jefferson	34	9	.00594	25	.01650
*Jeffrey	62	45	.02970	17	.01122

* Rates apply only by truck. No rail rates published.

EXHIBIT 11—Continued

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Junius	43	8	.00528	35	.02310
Kadoka	56	29	.01914	27	.01782
Kampeska	47	13.5	.00891	33.5	.02211
Kaylor	40	11	.00726	29	.01914
*Keldron	65	52	.03432	13	.00858
Kennebec	51	18	.01188	33	.02178
*Keystone	65	48	.03168	17	.01122
Kidder	53	27	.01782	26	.01716
Kimball	42	14	.00924	28	.01848
Kingsburg	40	12.5	.00825	27.5	.01815
Kranzburg	42	13.5	.00891	28.5	.01881
LaBolt	47	14.5	.00957	32.5	.02145
Lake Andes	42	14	.00924	28	.01848
Lake City	52	29	.01914	23	.01518
Lake Norden	43	11	.00726	32	.02112
Lake Preston	43	10	.00660	33	.02178
*Landeau	62	38	.02508	24	.01584
Lane	42	13.5	.00891	28.5	.01221
Langford	47	21	.01386	26	.01716
*Lantry		55	.03630	16	.01056
*LaPlant		45	.02970	21	.01386
Lead	67	46	.03036	21	.01386
Lebanon	52	22	.01452	30	.01980
Lemmon	65	52	.03432	13	.00858
Lennox	35	7	.00462	28	.01848
Leola	53	24	.01584	29	.01914
Lesterville	40	11	.00726	29	.01914
Letcher	43	11.5	.00759	31.5	.02079
Lily	47	16	.01056	31	.02046
Loomis	43	11	.00726	32	.02112
Lowry	50	26	.01716	24	.01584
*Loyalton	53	20	.01320	33	.02178
Lyman	51	18	.01188	33	.02178
Lyons	38	6	.00396	32	.02112
McCook	34	11.5	.00759	22.5	.01485
McIntosh	65	52	.03432	13	.00858
McLaughlin	62	45	.02970	17	.01122
Madison	38	7.5	.00495	30.5	.02013
Madra	62	35.5	.02343	26.5	.01749
*Mahto	62	45	.02970	17	.01122
Manchester	43	11.5	.00759	31.5	.02079
Mansfield	49	19.5	.01287	29.5	.01947
Maple Leaf	62	48	.03168	14	.00924
Marion Jct.	40	7.5	.00495	32.5	.02145
Marvin	49	20.5	.01353	28.5	.01881
Meckling	35	10	.00660	25	.01650
*Melham	47	14	.00924	33	.02178
Mellette	49	18.5	.01221	30.5	.02013
Menno	40	8.5	.00561	31.5	.02079
Midland	57	30.5	.02013	26.5	.01749
Milbank	49	20.5	.01353	28.5	.01881
*Millard	53	20	.01320	33	.02178
Miller	47	15.5	.01023	31.5	.02079
Mina	53	26	.01716	27	.01782
*Minnekahta	64	50	.03300	14	.00924
Miranda	51	19	.01254	32	.02112

* Rates apply only by truck. No rail rates published.

EXHIBIT 11—Continued

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Mission Hill	35	10	.00660	25	.01650
Mitchell	40	10	.00660	30	.01980
Mobridge	57	29	.01914	28	.01848
Monroe	38	7.5	.00495	30.5	.02013
Montrose	38	6.5	.00429	31.5	.02079
Morefield	38	6	.00396	32	.02112
Moritz	42	13	.00858	29	.01914
[fol. 521]					
*Morristown	65	52	.03432	13	.00858
*Mosher	54	38	.02508	16	.01056
*Mossman	66	45	.02970	21	.01386
Mt. Vernon	42	11.5	.00759	30.5	.02013
Murdo MacKenzie	52	21.5	.01419	30.5	.02013
*Mystic	65	46	.03036	19	.01254
*Nahant	67	46	.03036	21	.01386
Nahon	49	20	.01320	29	.01914
Naples	47	13.5	.00891	33.5	.02211
Newark	52	23	.01518	29	.01914
New Effington	51	27.5	.01815	23.5	.01551
Newell	69	50	.03300	19	.01254
Nisland	69	50	.03300	19	.01254
Norbeck	47	20	.01320	27	.01782
Northville	49	18.5	.01221	30.5	.02013
Nowlin	60	32	.02112	28	.01848
Nunda	43	7.5	.00495	35.5	.02343
Oacoma	51	15.5	.01023	35.5	.02343
*Oelrichs	62	48	.03168	14	.00924
Okaton	56	23	.01518	33	.02178
Oldham	43	9.5	.00627	33.5	.02211
Onaka	50	21	.01386	29	.01914
Onida	53	21	.01386	32	.02112
*Oral	63	48	.03168	15	.00990
Ordway	52	22.5	.01485	29.5	.01947
*Orient	53	38	.02508	15	.00990
Ortley	49	19.5	.01287	29.5	.01947
Osceola	47	14	.00924	33	.02178
Owanka	63	42	.02772	21	.01386
*Parade	66	55	.03630	11	.00726
Parker	38	7.5	.00495	30.5	.02013
Parkston	40	12.5	.00825	27.5	.01815
Peaks	37	5.5	.00363	31.5	.02079
Peever	51	24	.01584	27	.01782
Philip	62	35	.02310	27	.01782
Piedmont	67	44	.02904	23	.01518
Pierpont	47	20	.01320	27	.01782
Pierre	53	23	.01518	30	.01980
*Plana	53	22.5	.01485	30.5	.02013
Plankinton	42	12.5	.00825	29.5	.01947
Platte	42	15.5	.01023	26.5	.01749
Plumb	40	11	.00726	29	.01914
Pollock	62	44	.02904	18	.01188
Powell	62	33.5	.02211	28.5	.01881
Presho	51	18.5	.01221	32.5	.02145
*Pringle	65	50	.03300	15	.00990

* Rates apply only by truck. No rail rates published.

EXHIBIT 11—Continued

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
*Promise	62	45	.02970	17	.01122
*Provo	64	52	.03432	12	.00792
Pukwana	47	14.5	.00957	32.5	.02145
Putney	53	27	.01782	26	.01716
Quinn	63	40	.02640	23	.01518
Ramona	43	8.5	.00561	34.5	.02277
Randolph	49	19	.01254	30	.01980
Rapid City	63	44	.02904	19	.01254
Rauville	47	13	.00858	34	.02244
Ravinia	42	14	.00924	28	.01848
Raymond	47	15	.00990	32	.02112
*Red Elm	71	55	.03630	16	.01056
Redfield	47	16.5	.01089	30.5	.02013
Ree Heights	47	16.5	.01089	30.5	.02013
Reliance	51	16.5	.01089	34.5	.02277
Renner	37	5.5	.00363	31.5	.02079
Revillo	42	12.5	.00825	29.5	.01947
Richmond	52	23	.01518	29	.01914
*Ridgeview	66	45	.02970	21	.01386
Riverside	40	9.5	.00627	30.5	.02013
*Rochford	67	46	.03036	21	.01386
Rockham	51	18	.01188	33	.02178
Roscoe	53	32	.02112	21	.01386
Rosholt	51	27	.01782	24	.01584
Roslyn	52	29	.01914	23	.01518
Richland	34	10	.00660	24	.01584
[fol. 522]					
Rosseau	53	21	.01386	32	.02112
Roswell	43	9.5	.00627	33.5	.02211
Rowena	34	5	.00330	29	.01914
Rudolph	49	20.5	.01353	28.5	.01881
*Rumford	64	52	.03432	12	.00792
Rutland	38	7.5	.00495	30.5	.02013
*St. Charles	48	27	.01782	21	.01386
St. Lawrence	47	15.5	.01023	31.5	.02079
St. Onge	69	46	.03036	23	.01518
Salem	38	7.5	.00495	30.5	.02013
Scenic	63	36.5	.02409	26.5	.01749
Scotland	40	11	.00726	29	.01914
Selby	57	34	.02244	23	.01518
Seneca	51	21.5	.01419	29.5	.01947
Sherman	37	5.5	.00363	31.5	.02079
Shindler	34	5	.00330	29	.01914
Sinai	43	8.5	.00561	34.5	.02277
Sioux Falls	34	5.5	.00363	28.5	.01881
Sisseton	51	25.5	.01683	25.5	.01683
*Sitka	57	36	.02376	21	.01386
*Smithwick	63	48	.03168	15	.00990
South Shore	47	14	.00924	33	.02178
Spain	47	22.5	.01485	24.5	.01617
Spencer	38	8	.00528	30	.01980
Spottswood	47	15.5	.01023	31.5	.02079
Springfield	40	12	.00792	28	.01848
Stamford	56	26	.01716	30	.01980

* Rates apply only by truck. No rail rates published.

EXHIBIT 11—Continued

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Stickney	42	14	.00924	28	.01848
Stockholm	47	14	.00924	33	.02178
Strandsburg	42	12.5	.00825	29.5	.01947
Stratford	49	19.5	.01287	29.5	.01947
*Stratton	62	45	.02970	17	.01122
Sturgis	67	44	.02904	23	.01518
Summit	49	20.5	.01353	28.5	.01881
Tabor	40	12	.00792	28	.01848
Tea	35	6.5	.00429	28.5	.01881
Teton	57	24.5	.01617	32.5	.02145
Thomas	42	12	.00792	30	.01980
Thunder Hawk	65	52	.03432	13	.00858
Tilford	67	44	.02904	23	.01518
Timber Lake	62	47	.03102	15	.00990
Tolstoy	50	23	.01518	27	.01782
Toronto	43	9.5	.00627	33.5	.02211
Trail City	62	45	.02970	17	.01122
Trent	37	6.5	.00429	30.5	.02013
Tripp	40	11	.00726	29	.01914
*Trojan	67	48	.03168	19	.01254
Troy	42	12.5	.00825	29.5	.01947
Tulare	47	15.5	.01023	31.5	.02079
Turton	47	17	.01122	30	.01980
Twin Brooks	49	20.5	.01353	28.5	.01881
Tyndall	40	12	.00792	28	.01848
Underwood	63	44	.02904	19	.01254
Unityville	38	7.5	.00495	30.5	.02013
Utica	40	10	.00660	30	.01980
Valley Springs	34	5	.00330	29	.01914
Van Metre	57	27.5	.01815	29.5	.01947
Vayland	47	15	.0099	32	.02112
Veblen	52	29	.01914	23	.01518
Verdon	49	18.5	.01221	30.5	.02013
Vermillion	34	10	.00660	24	.01584
Viborg	35	8	.00528	27	.01782
Victor	51	27	.01782	24	.01584
Vienna	47	12.5	.00825	34.5	.02277
Vilas	43	9.5	.00627	33.5	.02211
Virgil	43	14	.00924	29	.01914
*Virginia	62	45	.02970	17	.01122
Vivian	52	19	.01254	33	.02178
Volga	43	8	.00528	35	.02310
Volin	35	10	.00660	25	.01650
[fol. 523]					
Wagner	40	13.5	.00891	26.5	.01749
Wakonda	35	10	.00660	25	.01650
*Wakpala	62	45	.02970	17	.01122
*Walker	62	45	.02970	17	.01122
Wall	63	40	.02640	23	.01518
Wallace	47	15	.00990	32	.02112
Ward	40	7	.00462	33	.02178
Warner	49	21.5	.01419	27.5	.01815
Wasta	63	42	.02772	21	.01386
Watauga	65	52	.03432	13	.00858

* Rates apply only by truck. No rail rates published.

EXHIBIT 11—Continued

Destinations in South Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Watertown	42	12.5	.00825	29.5	.01947
Waubay	49	19	.01254	30	.01980
Waverly	42	12.5	.00825	29.5	.01947
Webster	49	19	.01254	30	.01980
Wecota	47	19.5	.01287	27.5	.01815
Wendte	57	26	.01716	31	.02046
Wentworth	38	7	.00462	31	.02046
Wessington	47	15	.00990	32	.02112
Wessington Springs	42	13.5	.00891	28.5	.01881
Westport	52	23.5	.01551	28.5	.01881
Weta	63	32	.02112	31	.02046
Wetonka	53	23.5	.01551	29.5	.01947
White	43	8.5	.00561	34.5	.02277
*White Butte	67	52	.03432	15	.00990
White Lake	42	13.5	.00891	28.5	.01881
White Rock	49	25.5	.01683	23.5	.01551
Whitewood	67	46	.03036	21	.01386
Willow Lake	47	13.5	.00891	33.5	.02211
Wilmot	51	22	.01452	29	.01914
Winfred	43	8.5	.00561	34.5	.02277
*Winner	51	35	.02310	16	.01056
*Winship	52	27	.01782	25	.01650
*Witten	53	36.5	.02409	16.5	.01089
Wolsey	47	15	.00990	32	.02112
*Wood	55	40	.02640	15	.00990
Woonsocket	43	12.5	.00825	30.5	.02013
Worthing	35	7	.00462	28	.01848
Yahota	47	14	.00924	33	.02178
Yale	47	14	.00924	33	.02178
Yankton	35	10	.00660	25	.01650
Zell	51	17.5	.01155	33.5	.02211

* Rates apply only by truck. No rail rates published.

[fol. 524]

Clerk's Note: Exhibit 12 is omitted at this place for the reason it appears attached to and a part of the Amended Petition Before the Interstate Commerce Commission at side fol. 249 of this record.

[fol. 525] EXHIBIT 13

Supplement No. 1—Issued June 20, 1941

Destinations in North Dakota	Rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Alfred	58	37	.02442	21	.01386
Anselm	54	33	.02178	21	.01386
Argusville	54	33.5	.02211	20.5	.01353
Ashley	63	40	.02640	23	.01518
Berlin	55	34	.02244	21	.01386
Bowman	73	56	.03696	17	.01122
Brampton	53	23	.01518	30	.01980
Breien	72	52	.03432	20	.01320
Bucyrus	73	54	.03564	19	.01254
*Buffalo Springs	73	56	.03696	17	.01122
Burnstad	63	40	.02640	23	.01518
Burt	72	55	.03630	17	.01122
Buttzville	55	33	.02178	22	.01452
Cannon Ball	72	50	.03300	22	.01452
Carson	72	54	.03564	18	.01188
Cayuga	53	27	.01782	26	.01716
Clement	53	31.5	.02079	21.5	.01419
Coburn	54	33	.02178	21	.01386
Cogswell	53	27	.01782	26	.01716
Crete	53	30	.01980	23	.01518
Danzig	63	40	.02640	23	.01518
Deisem	58	36	.02376	22	.01452
De Lamere	53	30	.01980	23	.01518
*Duane	55	27	.01782	28	.01848
Eckelson	58	38	.02508	20	.01320
Edgeley	55	30	.01980	25	.01650
Elgin	72	55	.03630	17	.01122
Ellendale	53	27	.01782	26	.01716
Elliott	55	33	.02178	22	.01452
Enderlin	54	35	.02310	19	.01254
Englevale	55	33	.02178	22	.01452
Flasher	72	54	.03564	18	.01188
Forbes	54	27	.01782	27	.01782
[illegible]rman	53	27	.01782	26	.01716
Fort Rice	72	50	.03300	22	.01452
Fredonia	56	36.5	.02409	19.5	.01287
Fullerton	53	32	.02112	21	.01386
Gackle	58	38	.02508	20	.01320
Gall	72	54	.03564	18	.01188
Gardner	54	33.5	.02211	20.5	.01353
Gascoyne	73	56	.03696	17	.01122
Glover	55	33	.02178	22	.01452
Grandin	54	35	.02310	19	.01254
*Griffin	76	56	.03696	20	.01320
Guelph	53	27	.01782	26	.01716
Gwinner	53	30	.01980	23	.01518
Hague	63	38	.02508	25	.01650
Hample	53	29	.01914	24	.01584
Harwood	54	33	.02178	21	.01386
Hastings	58	40	.02640	18	.01188
Havana	53	27	.01782	26	.01716
Haynes	69	52	.03432	17	.01122
Hei[illegible]	72	54	.03564	18	.01188

* Rates apply only by truck. No rail rates published.

EXHIBIT 13—Continued

Destinations in North Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Hettinger	69	52	.03432	17	.01122
Hillsboro	54	36.5	.02409	17.5	.01155
Huff	72	48	.03168	24	.01584
Independence	55	33	.02178	22	.01452
*Ives	76	59	.03894	17	.01122
Jud	58	37	.02442	21	.01386
Kathryn	58	38	.02508	20	.01320
Kelso	54	36.5	.02409	17.5	.01155
Kulm	56	36	.02376	20	.01320
Le Mars	50	27	.01782	23	.01518
La Moure	55	33	.02178	22	.01452
Lark	72	54	.03564	18	.01188
[fol. 526]					
Leonard	54	33	.02178	21	.01386
Lisbon	55	33	.02178	22	.01452
Litchville	58	40	.02640	18	.01188
Ludden	53	27	.01782	26	.01716
McLeod	54	29.5	.01947	24.5	.01617
Marion	58	40	.02640	18	.01188
Marmarth	76	59	.03894	17	.01122
Medberry	55	34	.02244	21	.01386
Milnor	53	30	.01980	23	.01518
Monango	55	27	.01782	28	.01848
*Montline	76	59	.03894	17	.01122
Mott	72	55	.03630	17	.01122
Napoleon	63	41	.02706	22	.01452
Nash	65	46	.03036	19	.01254
New England	75	56	.03696	19	.01254
New Leipzig	72	55	.03630	17	.01122
Nicholson	53	28	.01848	25	.01650
Nome	58	38	.02508	20	.01320
Oakes	53	28.5	.01881	24.5	.01617
Odessa	72	55	.03630	17	.01122
Perry	53	27	.01782	26	.01716
Petrel	69	52	.03432	17	.01122
*Potts	55	30	.01980	25	.01650
Ransom	53	27	.01782	26	.01716
*Reeder	73	56	.03696	17	.01122
Rhame	76	56	.03696	20	.01320
Rutland	53	27	.01782	26	.01716
Schmidt	72	48	.03168	24	.01584
Scranton	73	56	.03696	17	.01122
Sheldon	54	33	.02178	21	.01386
Silver Leaf	53	27	.01782	26	.01716
Solen	72	52	.03432	20	.01320
Stirum	53	30	.01980	23	.01518
Strasburg	63	40	.02640	23	.01518
Straubville	53	27	.01782	26	.01716
Streeter	58	39	.02574	19	.01254
Timmer	72	52	.03432	20	.01320
Venlo	54	31.5	.02079	22.5	.01485
Venturia	63	40	.02640	23	.01518
Verona	55	33	.02178	22	.01452
Wood	54	33	.02178	21	.01386
Zeeland	63	37	.02442	26	.01716

* Rates apply only by truck. No rail rates published.

[fol. 527] EXHIBIT 13—Continued

Rates Effective June 11, 1941

Destinations in North Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Abercrombia	51	29	.01914	22	.01452
Absaraka	56	34.5	.02277	21.5	.01419
Adams	67	48	.03168	19	.01254
Addison	53	33	.02178	20	.01320
Adrian	57	38	.02508	19	.01254
Alfred	57	37	.02442	20	.01320
Alice	55	35	.02310	20	.01320
Almont	71	52	.03432	19	.01254
Alsen	69	52	.03432	17	.01122
Amenia	53	34.5	.02277	18.5	.01221
Anamoose	65	47	.03102	18	.01188
Aneta	60	42	.02772	18	.01188
Anselm	50	33	.02178	17	.01122
Antelope	74	56	.03696	18	.01188
Ardoch	62	44	.02904	18	.01188
Arena	68	47	.03102	21	.01386
Arguseville	50	33.5	.02211	16.5	.01089
Armourdale	69	54	.03564	15	.00990
Arnold	68	47	.03102	21	.01386
Arthur	56	35	.02310	21	.01386
Arvilla	60	42	.02772	18	.01188
Ashley	62	40	.02640	22	.01452
Auburn	67	46	.03036	21	.01386
Aylmer	65	47	.03102	18	.01188
Ayr	56	36	.02376	20	.01320
Backoo	67	48	.03168	19	.01254
Baker	65	50	.03300	15	.00990
Baldwin	68	49	.03234	19	.01254
Balfour	67	47	.03102	20	.01320
Balta	65	48	.03168	17	.01122
Bantry	73	52	.03432	21	.01386
Barlow	62	42	.02772	20	.01320
Barney	52	28.5	.01881	3.5	.01551
Bartlett	65	46	.03036	19	.01254
Barton	73	50	.03300	23	.01518
Bathgate	67	50	.03300	17	.01122
Benedict	71	50	.03300	21	.01386
Keres	57	38	.02508	19	.01254
Bergen	67	48	.03168	19	.01254
Berlin	50	34	.02244	16	.01056
Berthold	75	54	.03564	21	.01386
Berwick	68	50	.03300	18	.01188
Beulah	73	56	.03696	17	.01122
Binford	62	43	.02838	19	.01254
Bisbee	69	52	.03432	17	.01122
Bismarck	65	47	.03102	18	.01188
Blabon	60	40	.02640	20	.01320
Blackmer	49	27	.01782	22	.01452
Blanchard	56	36.5	.02409	19.5	.01287
Bolack	62	44	.02904	18	.01188
Bordulac	62	41	.02706	21	.01386
Bottineau	73	52	.03432	21	.01386
Bowdon	66	44	.02904	22	.01452

Rates apply only by truck. No rail rates published.

EXHIBIT 13—Continued

Destinations in North Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Bowesmont	66	48	.03168	18	.01188
Bowman	71	56	.03696	15	.00990
Boynton	55	33	.02178	22	.01452
Braddock	65	42	.02772	23	.01518
Brampton	52	23	.01518	29	.01914
Brantford	62	42	.02772	20	.01320
Breien	71	52	.03432	19	.01254
Bremen	65	43	.02838	22	.01452
Brinsmade	65	46	.03036	19	.01254
Brittin	65	43	.02838	22	.01452
Brocket	66	48	.03168	18	.01188
Brumbaugh	69	52	.03432	17	.01122
Buchanan	62	39	.02574	23	.01518
[fol. 528]					
Bucyrus	71	54	.03564	17	.01122
Buffalo	55	35	.02310	20	.01320
*Buffalo Springs	71	56	.03696	15	.00990
Burdick	65	42	.02772	23	.01518
Burleigh	65	45	.02970	20	.01320
Burlington	74	52	.03432	22	.01452
Burnstad	62	40	.02640	22	.01452
Burt	71	55	.03630	16	.01056
Butte	71	48	.03168	23	.01518
Buttsville	50	33	.02178	17	.01122
Buxton	57	40	.02640	17	.01122
Calio	69	52	.03432	17	.01122
Cando	67	50	.03300	17	.01122
Cannon Ball	71	50	.03300	21	.01386
Carbury	76	52	.03432	24	.01584
Carrington	62	42	.02772	20	.01320
Carson	71	54	.03564	17	.01122
Cashel	66	46	.03036	20	.01320
Casselton	53	33	.02178	20	.01320
Cathay	65	42	.02772	23	.01518
Cavalier	67	48	.03168	19	.01254
Cayuga	52	27	.01782	25	.01650
Chaseley	66	44	.02904	22	.01452
Christine	51	30.5	.02013	20.5	.01353
Church's Ferry	65	48	.03168	17	.01122
Clement	52	31.5	.02079	20.5	.01353
Clementsville	57	38	.02508	19	.01254
Cleveland	62	38	.02508	24	.01584
Clifford	56	38	.02508	18	.01188
Clyde	69	52	.03432	17	.01122
Coburn	50	33	.02178	17	.01122
Cogwell	52	27	.01782	25	.01650
Colebarbor	71	52	.03432	19	.01254
Colfax	51	31.5	.02079	19.5	.01287
Colgate	60	38	.02508	22	.01452
Comstock	65	50	.03300	15	.00990
Conway	62	44	.02904	18	.01188
Copperstown	62	42	.02772	20	.01320
Cotter	53	33	.02178	20	.01320

* Rates apply only by truck. No rail rates published.

EXHIBIT 13—Continued

Destinations in North Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Courtenay	62	38	.02508	24	.01584
Crary	65	48	.03168	17	.01122
Crete	52	30	.01980	22	.01452
Crystal	67	48	.03168	19	.01254
Crystal Springs	62	40	.02640	22	.01452
Cuba	55	37	.02442	18	.01188
Cummings	57	38	.02508	19	.01254
Dahlen	65	48	.03168	17	.01122
Dana	65	42	.02272	23	.01518
Danzig	62	40	.02640	22	.01452
Darby	65	48	.03168	17	.01122
Davenport	53	33	.02178	20	.01320
Dawson	65	40	.02640	25	.01650
Dazey	57	40	.02640	17	.01122
Deisem	57	36	.02376	21	.01386
De Lamere	52	30	.01980	22	.01452
Denbigh	71	50	.03300	21	.01386
Denhoff	71	46	.03036	25	.01650
Derrick	66	50	.03300	16	.01056
Des Lacs	75	52	.03432	23	.01518
Devils Lake	65	48	.03168	17	.01122
Dickey	57	38	.02508	19	.01254
Dickinson	74	58	.03828	16	.01056
Dodge	76	58	.03828	18	.01188
Douglas	74	52	.03432	22	.01452
Dover	66	42	.02772	24	.01584
Doyon	65	46	.03036	19	.01254
Drake	65	47	.03102	18	.01188
Drayton	66	46	.03036	20	.01320
Dresden	68	50	.03300	18	.01188
Driscoll	65	42	.02772	23	.01518
*Duane	52	27	.01782	25	.01650
Deering	76	54	.03564	22	.01452
[fol. 529]					
Dunn Center	76	59	.03894	17	.01122
Dunseith	73	52	.03432	21	.01386
Durbin	53	33	.02178	20	.01320
Durkee	57	38	.02508	19	.01254
Dwight	51	28.5	.01881	22.5	.01485
Easby	68	50	.03300	18	.01188
Eastedge	57	38	.02508	19	.01254
Eckleson	57	38	.02508	19	.01254
Edgeley	50	30	.01980	20	.01320
Edinburg	65	46	.03036	19	.01254
Edmore	66	48	.03168	18	.01188
Edmunds	62	39	.02574	23	.01518
Egeland	69	52	.03432	17	.01122
Eldridge	62	38	.02508	24	.01584
Elgin	71	55	.03630	16	.01056
Elizabeth	55	36.5	.02409	18.5	.01221
Ellendale	52	27	.01782	25	.01650
Elliott	50	33	.02178	17	.01122
Elmo	65	48	.03168	17	.01122
Embden	55	35	.02310	20	.01320

* Rates apply only by truck. No rail rates published.

EXHIBIT 13—Continued

Destinations in North Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Emerado	60	42	.02772	18	.01188
Emrick	65	44	.02904	21	.01386
Enderlin	50	35	.02310	15	.00990
Englevale	50	33	.02178	17	.01122
*Enloe	51	29	.01914	22	.01452
Erie	56	35	.02310	21	.01386
Esmond	65	46	.03036	19	.01254
Essex	65	48	.03168	17	.01122
Fabian	55	35	.02310	20	.01320
Fairdale	67	49	.03234	18	.01188
Fairmount	49	27	.01782	22	.01452
Fairview Jct.	52	28.5	.01881	23.5	.01551
Falkirk	71	50	.03300	21	.01386
Fargo	51	33	.02178	18	.01188
Farmington	52	28.5	.01881	23.5	.01551
Fessenden	65	44	.02904	21	.01386
Fillmore	65	50	.03300	15	.00990
Fingal	55	36.5	.02904	18.5	.01221
Finley	60	40	.02640	20	.01320
Flasher	71	54	.03564	17	.01122
Fleece	66	50	.03300	16	.01056
Flora	65	44	.02904	21	.01386
Forbes	50	27	.01782	23	.01518
Forest River	62	44	.02904	18	.01188
Forman	52	27	.01782	25	.01650
Fort Clark	73	53	.03498	20	.01320
Fort Rice	71	50	.03300	21	.01386
Fort Totten	65	46	.03036	19	.01254
Foxholm	74	54	.03564	20	.01320
Franklin	57	38	.02508	19	.01254
Frazier	57	38	.02508	19	.01254
Fredonia	55	36.5	.02409	18.5	.01221
Fullerton	52	32	.02112	20	.01320
Funston	65	47	.03102	18	.01188
Gackle	57	38	.02508	19	.01254
Galchutt	51	30	.01980	21	.01386
Galesburg	56	36.5	.02409	19	.01254
Gall	71	54	.03564	17	.01122
Gardena	73	52	.03432	21	.01386
Gardner	50	33.5	.02211	16.5	.01089
Garrison	71	52	.03432	19	.01254
Gascoyne	71	56	.03696	15	.00990
Geneseo	52	27	.01782	25	.01650
Gilby	62	44	.02904	18	.01188
Gladstone	74	57	.03762	17	.01122
Glasston	67	48	.03168	19	.01254
Glenfield	62	42	.02772	20	.01320
Glenullen	71	54	.03564	17	.01122
Glover	50	33	.02178	17	.01122
Golden Valley	73	56	.03696	17	.01122
Goldwin	65	41	.02706	24	.01584
[fol. 530]					
Goodrich	71	46	.03036	25	.01650
Grace City	62	42	.02772	20	.01320

* Rates apply only by truck. No rail rates published.

EXHIBIT 13—Continued

Destinations in North Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Grafton	62	46	.03036	16	.01056
Grand Forks	57	42	.02772	15	.00990
Grandin	50	35	.02310	15	.00990
Grand Rapids	57	38	.02508	19	.01254
Granville	71	52	.03432	19	.01254
*Griffin	74	56	.03695	18	.01188
Guelph	52	27	.01782	25	.01650
Guptill	62	42	.02772	20	.01320
Guthrie	67	47	.03102	20	.01320
Gwinner	52	30	.01980	22	.01452
Hague	62	38	.02508	24	.01584
Hallidsy	76	58	.03828	18	.01188
Hamar	65	44	.02904	21	.01386
Hamberg	65	43	.02838	22	.01452
Hamilton	67	48	.03168	19	.01254
Hampden	66	50	.03300	16	.01056
Hample	52	29	.01914	23	.01518
Hankinson	52	27	.01782	25	.01650
Hannaford	57	40	.02640	17	.01122
Hannah	68	52	.03432	16	.01056
Harlow	65	50	.03300	15	.00990
Harmon	73	50	.03300	23	.01518
Harvey	65	45	.02970	20	.01320
Harwood	50	33	.02178	17	.01122
Hastings	57	40	.02640	17	.01122
Hatton	60	40	.02640	20	.01320
Havana	52	27	.01782	25	.01650
Haynes	67	52	.03432	15	.00990
Hazelton	65	42	.02772	23	.01518
Hazen	73	54	.03564	19	.01254
Heaton	66	44	.02904	22	.01452
Hebron	74	56	.03696	18	.01188
Heil	71	54	.03564	17	.01122
Heimdal	65	45	.02970	20	.01320
Hensel	67	48	.03168	19	.01254
Hensler	73	52	.03432	21	.01386
Herrick	66	46	.03036	20	.01320
Hesper	65	44	.02904	21	.01386
Hettinger	67	52	.03432	15	.00990
Hickson	51	30.5	.02013	20.5	.01353
Hillsboro	50	36.5	.02409	13.5	.00891
Homer	57	38	.02508	19	.01254
Honeyford	62	44	.02904	18	.01188
Hoople	67	46	.03036	21	.01386
Hope	60	38	.02508	22	.01452
Horace	53	33	.02178	20	.01320
Huff	71	48	.03168	23	.01518
Hunter	56	35	.02310	21	.01386
Hurdsfield	66	44	.02904	22	.01452
Hurning	57	38	.02508	19	.01254
Independence	50	33	.02178	17	.01122
Inkster	62	44	.02904	18	.01188
*Ives	74	59	.03894	15	.00990
Jamestown	57	38	.02508	19	.01254
Jamestown Jct.	57	38	.02508	19	.01254

* Rates apply only by truck. No rail rates published.

EXHIBIT 13—Continued

Destinations in North Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Jessie	62	43	.02838	19	.01254
Johnson	57	38	.02508	19	.01254
Johnstown	62	44	.02904	18	.01188
Joilette	66	50	.03300	16	.01056
Josephine	65	44	.02904	21	.01386
Juanita	62	42	.02772	20	.01320
Jud	57	37	.02442	20	.01320
Judson	68	50	.03300	18	.01188
Karlsruhe	67	48	.03168	19	.01254
Karnak	57	40	.02640	17	.01122
Kathryn	57	38	.02508	19	.01254
Kellogg	62	46	.03036	16	.01056
Kelly	62	44	.02904	18	.01188
Kelso	50	36.5	.02409	13.5	.00891
Kempton	60	42	.02772	18	.01188
[fol. 531]					
Lansford	78	56	.03696	22	.01452
Lorain	78	58	.03828	20	.01320
Kensal	62	39	.02574	23	.01518
Kief	71	47	.03102	24	.01584
Kilbernie	55	33	.02178	22	.01452
Kindred	51	33	.02178	18	.01188
Kintyre	65	41	.02706	24	.01584
Kloten	63	42	.02772	21	.01386
Kloze	57	38	.02508	19	.01254
Knox	68	48	.03168	20	.01320
Kongsberg	71	48	.03168	23	.01518
Kramer	73	52	.03432	21	.01386
Kulm	55	36	.02376	19	.01254
Lake Williams	65	43	.02838	22	.01452
Lakota	63	46	.03036	17	.01122
Lallie	65	46	.03036	19	.01254
La Mars	49	27	.01782	22	.01452
La Moure	50	33	.02178	17	.01122
Langdon	68	50	.03300	18	.01188
Langers	55	33	.02178	22	.01452
Lankin	67	46	.03036	21	.01386
Lanona	55	38	.02508	17	.01122
Larimore	60	42	.02772	18	.01188
Lark	71	54	.03564	17	.01122
Lawton	66	48	.03168	18	.01188
Leal	57	38	.02508	19	.01254
Leeds	65	48	.03168	17	.01122
Lehigh	74	58	.03828	16	.01056
Lehr	59	38	.02508	21	.01386
Lemert	65	42	.02772	23	.01518
Leonard	50	33	.02178	17	.01122
Lidgerwood	52	27	.01782	25	.01650
Linton	65	42	.02772	23	.01518
Lisbon	50	33	.02178	17	.01122
Litchville	57	40	.02640	17	.01122
*Lithia	51	30.5	.02013	20.5	.01353
Logan	71	50	.03300	21	.01386
Lone Tree	75	54	.03564	21	.01386

* Rates apply only by truck. No rail rates published.

EXHIBIT 13—Continued

Destinations in North Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Lovell	62	43	.02838	19	.01254
Lucca	55	36.5	.02409	18.5	.01221
Ludden	52	27	.01782	25	.01650
Luverne	57	40	.02640	17	.01122
McArthur	66	50	.03300	16	.01056
McCanna	62	42	.02772	20	.01320
McCluskey	71	48	.03168	23	.01518
McHenry	62	44	.02904	18	.01188
McKenzie	65	42	.02772	23	.01518
McLeod	50	29.5	.01947	20.5	.01353
McVille	63	42	.02772	21	.01386
Maddock	65	44	.02904	21	.01386
Magnus	65	46	.03036	19	.01254
Makoti	74	54	.03564	20	.01320
Mandan	68	47	.03102	21	.01386
Manfred	65	44	.02904	21	.01386
Mantador	52	27.5	.01815	24.5	.01617
Manvel	62	42	.02772	20	.01320
Mapes	63	46	.03036	17	.01122
Mapleton	53	33	.02178	20	.01320
Marion	57	40	.02640	17	.01122
Marmarth	74	59	.03894	15	.00990
Martin	65	45	.02970	20	.01320
Max	71	52	.03432	19	.01254
Mayville	56	38	.02508	18	.01188
Maza	67	50	.03300	17	.01122
Meckinock	62	44	.02904	18	.01188
Medberry	50	34	.02244	16	.01056
Medina	62	38	.02508	24	.01584
Melville	62	41	.02706	21	.01386
Mercer	71	48	.03168	23	.01518
Merricourt	55	34.5	.02277	20.5	.01353
Michigan	63	44	.02904	19	.01254
Millarton	57	38	.02508	19	.01254
[fol. 532]					
Mohall	78	56	.03696	22	.01452
Milnor	52	30	.01980	22	.01452
Milton	65	48	.03168	17	.01122
Minnewaukan	65	46	.03036	19	.01254
Minot	71	50	.03300	21	.01386
Minto	62	46	.03036	16	.01056
Moffit	65	42	.02772	23	.01518
Monango	52	27	.01782	25	.01650
*Montline	74	59	.03894	15	.00990
Montpelier	57	38	.02502	19	.01254
Mooreton	52	28.5	.01881	23.5	.01551
Mose	62	44	.02904	18	.01188
Mott	71	55	.03630	16	.01056
Munich	69	52	.03432	17	.01122
Mylo	73	52	.03432	21	.01386
Myra	55	33.5	.02211	21.5	.01419
Manson	73	50	.03300	23	.01518
Napoleon	62	41	.02706	21	.01386

* Rates apply only by truck. No rail rates published.

EXHIBIT 13—Continued

Destinations in North Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Nash	67	46	.03036	21	.01386
Neche	67	50	.03300	17	.01122
New England	74	56	.03696	18	.01188
New Leipzig	71	55	.03630	16	.01056
New Rockford	62	42	.02772	20	.01320
New Salem	68	50	.03300	18	.01188
Newville	67	50	.03300	17	.01122
Niagara	63	44	.02904	19	.01254
Nicholson	52	28	.01848	24	.01584
Nome	57	38	.02508	19	.01254
Northwood	60	40	.02640	20	.01320
Nortonville	57	38	.02508	19	.01254
Norwich	71	52	.03432	19	.01254
Oakes	52	28.5	.01881	23.5	.01551
Oberon	65	44	.02904	21	.01386
Odessa	71	55	.03630	16	.01056
Olmstead	69	52	.03432	17	.01122
Omemee	73	52	.03432	21	.01386
Oriska	55	36.5	.02409	18.5	.01221
Orr	62	44	.2904	18	.01188
Orrin	65	48	.03168	17	.01122
Osgood	53	33	.02178	20	.01320
Osnabrock	68	48	.03168	20	.01320
Overly	73	52	.03432	21	.01316
Page	56	36.5	.02409	19.5	.01287
Parkhurst	62	39	.02574	23	.01518
Park River	65	46	.03036	19	.01254
Pekin	63	44	.02904	19	.01254
Pembina	66	50	.03300	16	.01066
Pendennis	65	46	.03036	19	.01254
Penn	65	48	.03168	17	.01122
Perry	52	27	.01782	25	.01650
Perth	69	52	.03432	17	.01122
Petersburg	63	44	.02904	19	.01254
Petrel	67	52	.03432	15	.00990
Pettibone	65	43	.02838	22	.01452
Pillsbury	57	38	.02508	19	.01254
Pickardville	71	48	.03168	23	.01518
Pingree	62	39	.02574	23	.01518
Pisek	65	46	.03036	19	.01254
Pittsburg	66	48	.03168	18	.01188
Pleasant Lake	68	48	.03168	20	.01320
Portland	56	40	.02640	16	.01056
*Potts	50	30	.01980	20	.01320
Prairie Jct	74	54	.03564	20	.01320
Price	73	50	.03300	23	.01518
Prosper	53	34.5	.02277	18.5	.01221
Ramsey	65	48	.03168	17	.01122
Ransom	52	27	.01782	25	.01650
*Reeder	71	56	.03696	15	.00990
Reeves	57	38	.02508	19	.01254
Regan	68	47	.03102	21	.01386
Revere	62	40	.02640	22	.01452
Reynolds	57	40	.02640	17	.01122
Rhame	74	56	.03696	18	.01188

* Rates apply only by truck. No rail rates published.

[fol. 533] **Exhibit 13—Continued**

Destinations in North Dakota	Refined rate from Enid, Oklahoma in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Richardson	74	56	.03696	18	.01188
Robinson	65	45	.02970	20	.01320
Rogers	55	38	.02508	17	.01122
Rohrville	65	48	.03168	17	.01122
Rolette	73	52	.03432	21	.01386
Rolla	69	52	.03432	17	.01122
Rugby	68	48	.03168	20	.01320
Ruso	71	48	.03168	23	.01518
Rutland	52	27	.01782	25	.01650
Ryder	74	52	.03432	22	.01452
St. John	69	52	.03432	17	.01122
St. Thomas	67	46	.03036	21	.01386
Sanborn	55	38	.02508	17	.01122
Sanger	73	50	.03300	23	.01518
Sherwood	78	58	.03828	20	.01320
Saunders	51	33	.02178	18	.01188
Sawyer	71	50	.03300	21	.01386
Schmidt	71	48	.03168	23	.01518
Scranton	71	56	.03696	15	.00990
Selz	65	45	.02970	20	.01320
Sharon	60	40	.02640	20	.01320
Sheldon	50	33	.02178	17	.01122
Shepard	62	42	.02772	20	.01320
Sheyenne	65	44	.02904	21	.01386
Silva	65	48	.03168	17	.01122
Silver Leaf	52	27	.01782	25	.01650
Simcoe	71	50	.03300	21	.01386
Sims	71	52	.03432	19	.01254
Solen	71	52	.03432	19	.01254
Southam	65	48	.03168	17	.01122
South Heart	78	59	.03894	19	.01254
Spiritwood	57	38	.02508	19	.01254
Stanton	73	54	.03564	19	.01254
State Hospital	57	38	.02508	19	.01254
Steele	65	42	.02772	23	.01518
Sterling	65	42	.02772	23	.01518
Stevensons	52	28.5	.01881	23.5	.01551
Stewartdale	65	45	.02970	20	.01320
Stiles	52	27	.01782	25	.01650
Still	68	48	.03168	20	.01320
Stirum	52	30	.01980	22	.01452
Strasburg	62	40	.02640	22	.01452
Straubville	52	27	.01782	25	.01650
Streeter	57	39	.02574	18	.01188
Surrey	71	50	.03300	21	.01386
Sutton	62	42	.02772	20	.01320
Sweet Briar	68	50	.03300	18	.01188
Sydney	57	38	.02508	19	.01254
Sykeston	66	42	.02772	24	.01584
Tappen	62	40	.02640	22	.01452
Taylor	74	57	.03762	17	.01122
Temvik	65	42	.02772	23	.01518
Thompson	57	40	.02640	17	.01122
Thorne	73	52	.03432	21	.01386
Tilden	75	50	.03300	25	.01650

* Rates apply only by truck. No rail rates published.

EXHIBIT 13—Continued

Destinations in North Dakota	Refined rate from Enid, Oklahoma, in Cents Cwt.	Refined rate from Champlin, Iowa		Differential	
		In Cents Cwt.	In Cents per Gal.	In Cents Cwt.	In Cents per Gal.
Timmer	71	52	.03432	19	.01254
Tokio	65	46	.03036	19	.01254
Tolna	63	44	.02904	19	.01254
Tower City	55	35	.02310	20	.01320
Towner	68	50	.03300	18	.01188
Tunbridge	68	48	.03168	20	.01320
Turtle Lake	71	50	.03300	21	.01386
Tuttle	68	45	.02970	23	.01518
*Tyler	49	28.5	.01881	20.5	.01353
Underwood	71	50	.03300	21	.01386
Union	65	48	.03168	17	.01122
Upham	73	52	.03432	21	.01386
Valley City	55	38	.02508	17	.01122
Vashti	65	40	.02640	25	.01650
Velva	71	48	.03168	23	.01518
[fol. 533a]					
Venlo	50	31.5	.02079	18.5	.01221
Venturia	62	40	.02640	22	.01452
Verendrye	71	48	.03168	23	.01518
Verona	50	33	.02178	17	.01122
Voltaire	67	48	.03168	19	.01254
Voss	62	46	.03036	16	.01056
Wahpeton	49	28.5	.01881	20.5	.01353
Walcott	51	31.5	.02079	19.5	.01287
Wales	68	52	.03432	16	.01056
Wallum	57	40	.02640	17	.01122
Warren	53	33	.02178	20	.01320
Warwick	65	46	.03036	19	.01254
Washburn	68	50	.03300	18	.01188
Weaver	66	50	.0330[illegible]	16	.01056
Webster	67	48	.0316[illegible]	19	.01254
Wellsburg	65	45	.02970	20	.01320
Werner	76	58	.03828	18	.01188
West Fargo	51	33	.02178	18	.01188
Wheatland	55	33.5	.02211	21.5	.01419
Whitman	65	48	.03168	17	.01122
Wild Rice	51	31.5	.02079	19.5	.01287
Willow City	73	50	.03300	23	.01518
Wilton	68	49	.03234	19	.01254
Wimbledon	57	38	.02508	19	.01254
Windsor	62	38	.02508	24	.01584
Wing	68	47	.03102	21	.01386
Wishek	59	40	.02640	19	.01254
Wolford	73	50	.03300	23	.01518
Wood	50	33	.02178	17	.01122
*Woodhull	51	28.5	.01881	22.5	.01485
Woodworth	65	41	.02706	24	.01584
Wyndmere	52	28.5	.01881	23.5	.01551
York	68	48	.03168	20	.01320
Ypsilanti	57	38	.02508	19	.01254
Zap	73	56	.03696	17	.01122
Zeeland	62	37	.02442	25	.01650

* Rates apply only by truck. No rail rates published.

EXHIBIT "A"

THE GLOBE OIL & REFINING CO.

CHICAGO, ILLINOIS

1

FOR ACCOUNT OF
C S AND M E MC DONALD OPERATING AS

MC DONALD OIL CO

GREEN BAY WIS

TO BE SHIPPED TO
ORDER NOTIFY

C S AND M E MC DONALD OPERATING AS

MC DONALD OIL CO GREEN BAY WIS

ACKNOWLEDGEMENT OF ORDER AND/OR SHIPPING INSTRUCTIONS SEE NO.

DATE	YOUR ORDER NO.	SHIP WHEN
8-34		RUSH

VIA	TERMS	F O B	
CNW	1 0/0 SDBL	GR 3	9109-8-1

ONE TANK CAR GLOBE SUPER BRONZE GASOLINE WITH Q

PRICE 8.0875 PER GAL FOB GR 3 LESS 1/8 CENT PER GAL ADVERTISING

[fol. 534] EXHIBIT 14

Petroleum Quotations

Published in October 28, 1941, Issue Chicago Journal of Commerce

Tankcar Prices (Spot)

Yesterday's ruling spot prices to jobbers with bulk storage or to the consuming trade for delivery throughout the general middle western area, in tankcar lots, 8,000 to 10,000 gallons f. o. b. Group 3 (Oklahoma), exclusive of all federal, state or other taxes and handling charges:

Gasoline

(Cents per gallon)

U. S. Motor, 72-74 octane (regular)	6 @ 6¼
U. S. Motor, 63-66 octane	5⅝ @ 5⅞
U. S. Motor, 60 octane and below	5¼ @ 5½

(Above octane designations based on A. S. T. M. method of anti-knock testing.)

Kerosene

(Cents per gallon)

42-44 water white	4½ @ 4¾
41-43 water white	4⅜ @ 4⅝

Fuel Oil, Domestic

(Cents per gallon)

Range oil	4 @ 4¼
No. 1 white	3⅞ @ 4⅛
No. 2 straw	3⅝ @ 3⅞
No. 3 low cold test	3½ @ 3¾

(Based on Commercial Standard CS 12-40)

Gas Oil, Industrial

(Cents per gallon)

Zero (32-36)	3½ @ 3⅝
Ordinary (32-36)	3 @ 3½

Fuel Oil, Industrial

(Dollars per barrel)

No. 4, low cold test (24-28)	$1.05 @ 1.10
No. 4, 15 cold test and above (24-28)	.90 @ .95
No. 5, low cold test (18-22)	.85 @ .90
No. 5, 15 cold test and above (18-22)	.85 @ .90
No. 6, low cold test (10-16)	.85 @ .90
No. 6, 15 cold test and above (10-16)	.85 @ .90

(Based on Commercial Standard CS 12-40)

45. Q. Are there any other trade publications that should be identified in connection with the term "spot" market?

A. Yes. Some Refiners rely on Platts Oilgram as a market reporter. Platts Oilgram is published by the National Petroleum News (5 days weekly—Monday to Friday inclusive) information being summarized in The National Petroleum News which is published weekly on Wednesday.

I have a copy of the National Petroleum News, issue of October 29, 1941, page 40 which fully reveals the method of such quotations of refinery prices.

(Hands publication to Mr. Glasser.)

Mr. Glasser: Photo copy of such page of such publication so identified in the issue of October 29, 1941 of the National Petroleum News is offered in evidence as a part of the direct examination of the witness, L. A. Snyder.

REFINERY and SEABOARD PRICES

In bulk lots by Motor Transport, Tank Car, Barge or Tanker as shown

(NOTE—Parenthetical figures after prices indicate number of companies quoting when less than three companies are quoting.)

HOW PRICES ARE REPORTED—

Refinery and Seaboard prices in National Petroleum News are gathered by PLATT'S OILGRAM and are published in the Monday issue of the OILGRAM.

PLATT'S OILGRAM is a reporting service issued in three identical editions daily from Price Bureaus at New York, Cleveland, and Tulsa. (His PLATT'S OILGRAM prints and publishes what its publisher and representatives believe to be accurate news of sales, prices and current happenings affecting the oil industry and that will be of interest to its subscribers. As this information is usually private, OILGRAM reports it according to what it is able to obtain from sources deemed reliable.

All information is supplied without guarantee as to its completeness, accuracy time of transmission or promptness of delivery.

The subscriber receives this information for his private use and not for resale or further distribution.

Publisher reserves the right to change the extent, nature and form of showing this information at any time.

Prices shown in the tables are quotations (meaning sellers' general offer) or posted prices, or actual sales prices, reported to OILGRAM by refiners for "open spot" transactions, except as otherwise specified.

Prices arrived at by discounts off a specified price or "market date of shipment" prices named in contracts or prices arrived at in accordance with any arrangement made prior to date of sale, are not for "open spot" transactions and therefore are not considered in making the price tables. Prices made to brokers and prices in "inter-refinery" transactions are also not considered except as may be noted.

All prices are for "immediate" shipment except in Gulf Coast bulk transactions where shipment is generally to be made in ninety days. Prices are FOB refineries, pipelines, or tanker terminals in districts designated.

Prices shown are for quantities in bulk such as tank car lots, motor transport lots or barge lots; and in cents per gallon; heavy fuel oils are in dollars per barrel of 42 U.S. gallons; wax and petrolatums are in cents per pound. Prices applying to barges or canyons only are so designated.

Prices do not include taxes or inspection fees. Prices are published at the close of the business day.

Mid-Western prices in the tables were gathered from refiners with offices located in Chicago and the surrounding territory. While the prices are quoted on a Group 3 (Oklahoma) freight basis, this is in accordance with the custom of the oil industry which uses Group 3 as a price basis for the sake of comparing prices even when the material originates in another refining district. Other refinery prices are given by and for the particular refining district where the material is made and from which it is shipped.

When prices obtained by OILGRAM do not conform to these conditions the exception and the new conditions are noted in the news text or in connection with the price table by footnote or otherwise, for the particular refinery or sales district involved.

Crude oil and products covered by OILGRAM'S news and price service, except where noted, have been represented to the publisher as fully up to the customary trade specifications indicated and according to the generally accepted methods of test; and all crude oil and all products thereof as having been lawfully produced and transported.

Any apparent error should be reported to the nearest OILGRAM or National Petroleum News office at once as no correction will be made after the second issue of the OILGRAM or National Petroleum News following its publication.

NOTICE—Owing to great demand, refiners generally limit quotations to regular customers and refuse bids, though higher, from others. Refiners' prices and sales shown; bids reported to market leads.

Summary of Daily Gasoline Prices (Oct. 21 to Oct. 27)

U. S. Motor, (ASTM octane)	Monday Oct. 27	Friday Oct. 24	Thursday Oct. 23	Wednesday Oct. 22	Tuesday Oct. 21
60-62 octane Ethyl:					
Oklahoma	6.75 - 7.25	6.75 - 7.25	6.75 - 7.25	6.75 - 7.25	6.75 - 7.25
Mid-Western (Group 3 basis)	7.6 (1)	7.6 (1)	7.6 (1)	7.6 (1)	7.6 (1)
N. Tex. (For shpt. to Tex. & N. M. dest'ns.)	7 -7.125 (2)	7 -7.125 (2)	7-7.125 (2)	7-7.125 (2)	7-7.125 (2)
W. Tex. (For shpt. to Tex. & N. M. dest'ns.)	7.25 (1)	7.25 (1)	7.25 (1)	7.25 (1)	7.25 (1)
70-74 octane:					
Oklahoma	6 - 6.375	6 - 6.375	6 - 6.375	6 - 6.375	6 - 6.375
Mid-Western (Group 3 basis)	6 - 6.375	6 - 6.375	6 - 6.375	6 - 6.375	6 - 6.375
N. Tex. (For shpt. to Tex. & N. M. dest'ns.)	6 - 6.625	6 - 6.625	6 - 6.625	6 - 6.625	6 - 6.625
W. Tex. (For shpt. to Tex. & N. M. dest'ns.)	6.125- 6.25	6.125- 6.25	6.125- 6.25	6.125- 6.25	6.125- 6.25
68-69 octane:					
Oklahoma	5.625- 6	5.625- 6	5.625- 6	5.625- 6	5.625- 6
Mid-Western (Group 3 basis)	5.6 - 6	5.6 - 6	5.6 - 6	5.6 - 6	5.6 - 6
N. Tex. (For shpt. to Tex. & N. M. dest'ns.)	5.625-6.25	5.625- 6.25	5.625- 6.25	5.625-6.25	5.625- 6.25
W. Tex. (For shpt. to Tex. & N. M. dest'ns.)	5.75 - 5.875	5.75 - 5.875	5.75 - 5.875	5.75 - 5.875	5.75 - 5.875
60 octane & below:					
Oklahoma	5.25 - 5.625	5.25 - 5.625	5.25 - 5.625	5.25 - 5.625	5.25 - 5.625
Mid-Western (Group 3 basis)	5.2 - 5.625	5.2 - 5.625	5.2 - 5.625	5.2 - 5.625	5.2 - 5.625
N. Tex. (For shpt. to Tex. & N. M. dest'ns.)	5.25 - 5.875	5.25 - 5.875	5.25 - 5.875	5.25 - 5.875	5.25 - 5.875
W. Tex. (For shpt. to Tex. & N. M. dest'ns.)	5.375- 5.5	5.375- 5.5	5.375- 5.5	5.375- 5.5	5.375- 5.5
Motor Gasoline, 70-74 octane (ASTM):					
New York harbor	8 - 8.5	8 - 8.5	8 - 8.5	8 - 8.5	8 - 8.5
New York harbor, barges	7.9 - 8.5	7.9 - 8.5	7.9 - 8.5	7.9 - 8.5	7.9 - 8.5
Philadelphia district	8 - 8.25	8 - 8.25	8 - 8.25	8 - 8.25	8 - 8.25
Baltimore district	7.75-8.25 (2)	7.75-8.25 (2)	7.75-8.25 (2)	7.75-8.25 (2)	7.75-8.25 (2)
Motor Gasoline:					
Western Points, Specified-Warren:					
Min. 80 Oct. (20 Research)	8 (2)	8 (2)	8 (2)	8 (2)	8 (2)
74-76 Oct. (ASTM)	7.75 (1)	7.75 (1)	7.75 (1)	7.75 (1)	7.75 (1)
74-76 Oct. (L-S)	7.5-7.75 (2)	7.5-7.75 (2)	7.5 - 7.75 (2)	7.5-7.75 (2)	7.5-7.75 (2)
Western Points, Ordnance Motorists:					
Min. 80 Oct. (20 Research)	8 - 8.25 (2)	8 - 8.25 (2)	8 - 8.25 (2)	8 - 8.25 (2)	8 - 8.25 (2)
74-76 Oct. (ASTM)	7.25 - 7.75	7.25 - 7.75	7.25 - 7.75	7.25 - 7.75	7.25 - 7.75
74-76 Oct. (L-S)	7.25 - 7.5	7.25 - 7.5	7.25 - 7.5	7.25 - 7.5	7.25 - 7.5

REFINERY PRICES

Gasoline—U. S. Motor (ASTM Octane) except where otherwise specified

Prices Effective	Oct. 27	Oct. 28
OKLAHOMA		
80-82 ont. Ethyl	6.75 - 7.25	6.75 - 7.25
72-74 ont.	6 - 6.375	6 - 6.375
62-66 ont.	5.625- 6	5.625- 6
60 ont. & below	5.25 - 5.625	5.25 - 5.625
80-82 ASO o.p.	5.375 (1)	5.375 (1)
MID-WESTERN (Group 3 basis)		
80-82 ont. Ethyl	7 (1)	7 (1)
72-74 ont.	6 - 6.375	6 - 6.375
62-66 ont.	5.6 - 6	5.6 - 6
60 ont. & below	5.2 - 5.625	5.2 - 5.625
N. TEX. (For shpt. to Tex. & N. M. dest'ns.)		
80-82 ont. Ethyl	7 - 7.125 (2)	7 - 7.125 (2)
72-74 ont.	6 - 6.625	6 - 6.625
62-66 ont.	5.625 - 6.25	5.625 - 6.25
60 ont. & below	5.25 - 5.875	5.25 - 5.875
80-82, ASO o.p.	5.5 - 6 (1)	5.5 - 6 (1)
W. TEX. (For shpt. to Tex. & N. M. dest'ns.)		
80-82 ont. Ethyl	7.25 (1)	7.25 (1)
72-74 ont.	6.125 - 6.25	6.125 - 6.25
62-66 ont.	5.75 - 5.875	5.75 - 5.875
60 ont. & below	5.375 - 5.5	5.375 - 5.5
CENT. W. TEX. (Prices to truck transports)		
80 ont. & above	7.125 (2)	7.125 (2)
72-74 ont.	6.125 (2)	6.125 (2)
67-69 ont.	5.625 (2)	5.625 (2)
66 ont. & below	5.375 (2)	5.375 (2)
AMARILLO, TEX. (For shpt. to W. Okla. & Tex. differential territory.)		
60 ont. & below	5.375-5.875 (2)	5.375-5.875 (2)
80-82, ASO o.p.	5.5 - 6 (1)	5.5 - 6 (1)

Prices Effective	Oct. 27	Oct. 28
KANSAS (For Kansas destinations only)		
80-82 ont. Ethyl	7.5 (1)	7.5 (1)
72-74 ont.	6.5 - 6.875	6.5 - 6.875
62-66 ont.	5.9 - 6	5.9 - 6
60 ont. & below	5.5 - 5.625	5.5 - 5.625
ARK. (For shipment to Ark. & La.)		
72-74 ont.	6 (1)	6 (1)
70-72 ont.	5.875 (1)	5.875 (1)
60 ont. & below	5.5 (1)	5.5 (1)
WESTERN PENNA. (Motor gasoline.)		
Bradford-Warren:		
Min. 80 ont. ('29 research)	8 (2)	8 (2)
74-76 ont. (ASTM)	7.75 (1)	7.75 (1)
74-76 ont. (L-3)	7.5-7.75 (2)	7.5-7.75 (2)
Other districts:		
Min. 80 ont. ('29 research)	8 - 8.25 (2)	8 - 8.25 (2)
74-76 ont. (ASTM)	7.25 - 7.75	7.25 - 7.75
74-76 ont. (L-3)	7.25 - 7.5	7.25 - 7.5
CENTRAL MICHIGAN (FOB Central Mich. refinery group basis for shpt. within Mich.; shpts. may originate at points outside Central group)		
U.S. Motor: (Oct. L-3):		
72-74 ort.	8.5	8.5
67-69 ort.	7.7 - 7.75	7.7 - 7.75
Str. run gasoline, excluding Detroit shpt.	6 - 6.25	6 - 6.25
OHIO (S. O. (Min quotations for statewide delivery and subject to exceptions for local price discrimination)		
72-74 ort.	8.375	8.375
CALIFORNIA U.S. Motor:		
58-61 grav., 375-600 o.p., 63 ort. & above	7 - 8	7 - 8
54-58 grav., for outside state shipment	5.5 - 7	5.5 - 7
54-58 grav., for instate shipment	5 - 6.75	5 - 6.75

Kerosine, Gas & Fuel Oils

Prices Effective	Oct. 27	Oct. 28
OKLAHOMA		
41-43 grav. w.w.	4.375- 4.75	4.375- 4.75
42-44 grav., w.w.	4.5 - 4.875	4.5 - 4.875
Range Oil	4 - 4.375	4 - 4.375
No. 1 P.W.	3.875- 4.25	3.875- 4.25
No. 1 straw	3.5 -4.25 (2)	3.5 -4.25 (2)
No. 2 straw	3.625- 4.125	3.625- 4.125
No. 3 fuel	3.5 - 3.625	3.5 - 3.625
U.G.I. Gas Oil	3.625 (1)	3.625 (1)
No. 6 fuel	$0.80-$0.90 (2)	$0.80-$0.90 (2)
14-16 fuel	$0.95 (2)	$0.95 (2)
MID-WESTERN (Group 3 basis)		
41-43 grav. w.w.	4.375- 4.75	4.375- 4.75
42-44 grav. w.w.	4.5 - 4.875	4.5 - 4.875
Range Oil	4 -4.3 (2)	4 -4.3 (2)
No. 1 p.w.	3.875- 4.125	3.875- 4.125
No. 1 straw	3.6 - 3.8	3.6 - 3.8
No. 2	3.5 - 3.7	3.5 - 3.7
No. 3	$0.85 (1)	$0.85 (1)
No. 6	$0.85-$0.875 (2)	$0.85-$0.875 (2)
N. TEX. (For shpt. to Tex. & N. M. dest'ns.)		
41-43 grav. w.w.	4.125- 4.875	4.125- 4.875
No. 1 P.W.	4.2 -4.5 (2)	4.2 -4.5 (2)
AMARILLO, TEX. (For shpt. to W. Okla. & Tex. differential territory.)		
41-43 grav. w.w.	4.75 (2)	4.75 (2)
No. 1 straw	4.3 (1)	4.3 (1)
KANSAS (For Kansas destinations only)		
41-43 grav. w.w.	4.7 (1)	4.7 (1)
42-44 gravity w.w.	4.8 - 4.875	4.8 - 4.875
No. 1 P.W.	4.2 - 4.3	4.2 - 4.3
No. 6 fuel	$0.90-$0.925 (2)	$0.90-$0.925 (2)

POSITIVELY NO CLAIMS ALLOWED FOR SHORTAGE UNLESS ACCOMPANIED BY AFFIDAVIT AND OUR OFFICE NOTIFIED BY WIRE FOR AUTHORITY BEFORE CAR IS UNLOADED

THE GLOBE OIL & REFINING CO. OF ILLINOIS

THE GLOBE OIL & REFINING CO.

ILLINOIS

PETROLEUM PRODUCTS

59 EAST VAN BUREN ST., CHICAGO, ILL.

(2)

DATE ORDERED

ORDERED SHIPPED

INVOICE NO. E 182

DATE 1/9/34

SHIPPER'S ORDER NO.

DATE SHIPPED 1/9/34

SHIPPED FROM LEM[illegible]

YOUR ORDER NO.

SOLD TO C B AND M E McDONALD
DOING BUSINESS AS McDONALD OIL CO
GREEN BAY, WISCONSIN

SHIPPED TO [illegible] OIL & REF. CO, GREEN BAY, WIS, NOTIFY C B & M E McDONALD-McDONALD OIL CO, GREEN BAY, WISCONSIN

F. O. B. GR 3

VIA SANTA FE CHICAGO GRC C&NW

TERMS 1% 30 BL ATTD

CAR INITIAL AND NO.	COMMODITY	SHELL CAP.	TEMP.	GALLONS	PRICE	AMOUNT
GTTX 8550	GLOBE SUPER BRONZE GASOLINE	8171	34	8299	.0475	$394.20
	FREIGHT					
	53929 @ 46¢ $248.07					
	53929 @ 17.5 94.38					153.69
	FEDERAL TAX 1¢ PER GALLON					82.99
						$630.88
	LESS $ 1/8¢ PER GALLON ADVERTISING					10.37
						$620.51

CASH DISCOUNT OF $ _____ WILL BE ALLOWED

IF PAID ON OR BEFORE _____

POSITIVELY NO CLAIM FOR OUTAGE ALLOWED UNLESS ACCOMPANIED BY AFFIDAVITS OF AT LEAST TWO DISINTERESTED PARTIES AND OUR OFFICE NOTIFIED BY WIRE BEFORE CAR IS UNLOADED

536

383

EXHIBIT "B"

DUPLICATE INVOICE

Credit 12-28-39

W. H. BARBER COMPANY

OFFICE AND WAREHOUSE
3650 SOUTH HOMAN AVENUE
TELEPHONE LAFAYETTE 0250
Chicago, Ill.

12-27-39

ORDER NO.

ORDER DATE 12-26-39

SHIP TO

SAME

YOUR ORDER NO.

YOUR REQ. NO.

SOLD TO

REEDSVILLE CO-OP ASS'N

REEDSVILLE, WISC

INVOICE NO. E 6660

PAYABLE IN CHICAGO EXCHANGE

TERMS 1-10

VIA CNW AT CHGO F.O.B. GROUP 3 FREIGHT COLLECT&EQUAL

1 TANK CAR APPROX 8000 GALS FOX CO-OP Q TREATED BRONZE COLOR GASOLINE

CAR NO SERX 8103 CAPACITY SF	81 66		
TEMP 36 DEG	1 38		
	83 04	GALS AT .04875 GAL	404 82
PLUS 1 ¢ GAL TAX PAID BY MFG (NET)			
~~XXX XXXXXXXXXXXXXXXXXX~~ SOLD STATE TAX FREE TO LIC. DISTR.			83 04
CHARGE FRT GROUP THREE ON 53896# AT 49 ¢CWT			264 09
ALLOW FRT LEMONT ON 53896# AT 19 ¢CWT			751 95
SHIPPED FROM LEMONT ILL 12-27-39			102 40
VIA SANTA FE CHGO BRC CNW			649 55

CONTRACT

NO CLAIM FOR LOSS OR LEAKAGE OF ANY NATURE ALLOWED AFTER DELIVERY IS MADE IN GOOD CONDITION.
WHEN RETURNING EMPTY DRUMS OR BARRELS SHIP THEM TO CHICAGO, ILL., ILLINOIS NORTHERN RAILWAY DELIVERY.
W. H. BARBER COMPANY WILL ACCEPT CHECKS, DRAFTS, AND OTHER ITEMS FOR COLLECTION AS THE AGENT OF THE SENDER AND AT HIS RISK FOR CONDITIONAL CREDIT ONLY AND SUBJECT TO ALL RULES AND REGULATIONS OF CHICAGO BANKS, AND RESERVES THE RIGHT TO CHARGE BACK TO CUSTOMER ANY ITEM CHARGED BACK TO IT FOR ANY CAUSE WHATSOEVER BY ITS DEPOSITORY BANK.

EXHIBIT " "

FORM K-313

THE GLOBE OIL & REFINING CO.

KANSAS

PETROLEUM PRODUCTS

1108 BROWN BUILDING, WICHITA, KANSAS

Invoice No. E-3679

Date 5-8-35

Date Ordered: Example

Ordered Shipped: 3749

Shipper's Order No. T-37611

Date Shipped 5-8-35

Shipped From MCPHERSON, KS.

Your Order No.

F. O. B. WICHITA, KS.

Terms 1-10

Sold To: SHARP OIL COMPANY, MILTONVALE, KANSAS.

Pd CK 347

Shipped To: SAME HOXIE, KANSAS.

Via: TRUCK

Car Initial and No	Commodity	Shell Cap	Temp	Gallons	Price	Amount
	42-44 KEROSENE	310	60	310	.043125	$ 13.37
	PLUS FRT. EQUAL. 310 GALS. @				.0036	1.12
	38-40 P. W. DISTILLATE	302	60	302	.035	10.57
	PLUS FRT. EQUAL. 302 GALS. @				.0036	1.09
	U. S. MOTOR GASOLINE	441	60	441	.04625	20.40
	PLUS FRT. EQUAL. 441 GALS. @				.0036	1.59
	GLOBE SUPERPBRONZE GASOLINE	860	60	860	.055	47.30
	PLUS FRT. EQUAL. 860 GALS. @				.0036	3.10
	EXCISE TAX (NET)					13.01
	INSPECTION FEE 1¢ PER 50 GAL. BBL.					.32
						$ 111.87
	LESS 1/8¢ PER GALLON FOR ADVERTISING.					1.08
						$ 110.79

Cash Discount of $ .92 will be allowed

If paid on or before: 5-18-35

POSITIVELY NO CLAIM FOR OUTAGE ALLOWED UNLESS ACCOMPANIED BY AFFIDAVITS OF AT LEAST TWO DISINTERESTED PARTIES AND OUR OFFICE NOTIFIED BY WIRE BEFORE CAR IS UNLOADED

EXHIBIT "D"

FORM K-213 ●

THE GLOBE OIL & REFINING CO.
KANSAS

PETROLEUM PRODUCTS

1108 BROWN BUILDING, WICHITA, KANSAS

DATE ORDERED

ORDERED SHIPPED

INVOICE NO. E-3799

DATE 5-9-35

SHIPPER'S ORDER NO. T-37697

DATE SHIPPED 5-9-35

SOLD TO SHARP OIL COMPANY, MILTONVALE, KANSAS.

SHIPPED FROM MCPHERSON, KS.

YOUR ORDER NO.

SHIPPED TO SAME

F. O. B. WICHITA, KS.

VIA TRUCK

TERMS 1-10

CAR INITIAL AND NO.	COMMODITY	SHELL CAP.	TEMP.	GALLONS	PRICE	AMOUNT
	42-44 KEROSENE	310	60	310	.043125	$ 13.37
	PLUS FRT. EQUAL. 310 GALS. @				.0020	.62
	U. S. MOTOR GASOLINE	743	60	743	.046875	34.83
	PLUS FRT. EQUAL. 743 GALS. @				.0020	1.49
	GLOBE SUPER-BRONZE GASOLINE	860	60	860	.055	47.30
	PLUS FRT. EQUAL. 871 GALS. @				.0020	1.74
	DITTO (FUEL TANK)			11	.055	.61
	STATE TAX				.03	.33
	EXCISE TAX (NET)					16.14
	INSPECTION FEE 1¢ PER 50 GAL. BBL.					.38
	LESS 1/8¢ PER GALLON FOR ADVERTISING.					$ 116.81 1.08
	CASH DISCOUNT OF $ .96 WILL BE ALLOWED IF PAID ON OR BEFORE 5-19-35					$ 115.73

POSITIVELY NO CLAIM FOR OUTAGE ALLOWED UNLESS ACCOMPANIED BY AFFIDAVITS OF AT LEAST TWO DISINTERESTED PARTIES AND OUR OFFICE NOTIFIED BY WIRE BEFORE CAR IS UNLOADED

539

EXHIBIT "E"

FORM K 313

THE GLOBE OIL & REFINING CO.
KANSAS

PETROLEUM PRODUCTS

1108 BROWN BUILDING, WICHITA, KANSAS

INVOICE No. M 30686

DATE 4-15-36

DATE ORDERED

ORDERED SHIPPED

YOUR ORDER NO.

SHIPPER'S ORDER NO. [illegible]

DATE SHIPPED 4-[illegible]-36

SHIPPED FROM [illegible], [illegible]

F. O. B. [illegible], [illegible]

TERMS 1-[illegible]

SOLD TO

Sharp Oil Company
Miltonvale, Kansas

SHIPPED TO

Same

Truck

CAR INITIAL AND NO.

COMMODITY	SHELL CAP	TEMP	GALLONS	PRICE	FRT. EQUAL	AMOUNT
U. S. Motor Gasoline	565	68	562	.05125	.0020	$28.80 1.12
Globe Super-Bronze Gasoline	1281	68	1275	.0625	.0020	79.69 2.55
Globe Gasoline Min. 65 Oct.	335	68	333	.06125	.0020	[illegible] [illegible]

FEDERAL TAX $ 21.70 STATE TAX $ INSP. FEE $ .43 22.13

[illegible] $ 1.29 [illegible] 4-25-36 $155.36

[illegible] TRACTOR FUEL ARE INFLAMMABLE, AND NOT FOR STOVES, WICK BURNERS, [illegible] ALLOWED UNLESS ACCOMPANIED BY AFFIDAVITS OF AT LEAST [illegible] PARTIES AND OUR OFFICE NOTIFIED BY WIRE BEFORE CAR IS UNLOADED.

EXHIBIT "F"

DUPLICATE INVOICE

Consumers Cooperative Association

North Kansas City, Missouri

ORDER NO. 7205
SHIPPING DATE 4-4-36
CAR NO. & INITIAL GATX 1581

INVOICE DATE APR 6 36 C
ROUTE SFE

SOLD TO WRIGHT COOP. EXCHANGE
WRIGHT, KANS.

TERMS	ITEMS		QUANTITY	PRICE	AMOUNT
COMP A & C					
4825	FARMCO GASOLINE	TEMP 44 40	40 67	.05125	208 [illegible]
COMP B					
2842	42-44 COOP KEROSENE	TEMP 44 20	20 32	.045	21 44
					229 67
PLUS FR DIFF.. GASOLINE			26552	.02	5 31
PLUS FRT DIFF.. KEROSENE			13279	.02	2 66
EXCISE TAX				.01	40 63
INSP. FEE					[illegible]
					342 43
DISC OK RECT INV.. $ 3.00					
SHELL FILL.					

No. 17088

541

EXHIBIT "G"

WEstport 5760

INVOICE

BAILEY OIL COMPANY

2743-45 SOUTHWEST BLVD.
KANSAS CITY, MISSOURI

DELIVERED TO Country Club Dairy Company
5633 Troost Avenue
Kansas City, Missouri

Standard Oil Co. (Indiana)
Probably required at
Sugar Creek Mo.
9 miles East of
Kansas City Mo

DATE November 9, 1934.

OUR ORDER NUMBER

YOUR ORDER NUMBER

TERMS

Make All Checks Payable to the Order of Bailey Oil Company, Kansas City, Missouri.

Red Crown Gasoline	.04625	
Freight	.01680	
Federal Tax	.01000	
State Tax	.02000	
City Tax	.01000	
Cartage	.00500	
520 Gallons	.10605	$[illegible]

EXHIBIT "H"

CHAMPLIN REFINING COMPANY

ENID, OKLAHOMA

Sales Contract (in duplicate) made on the 30th day of January, 1941, between the CHAMPLIN REFINING COMPANY, Enid, Oklahoma, hereinafter called Seller and FUNK AND YOUNG, Concordia, Kansas, hereinafter called Buyer.

The Buyer buys and the Seller sells for delivery during the period from February 15, 1941 to February 14, 1942, minimum of 30,000 and maximum of 50,000 gallons per month Champlin gasoline, and 42-44 Kerosene, at the Chicago Journal of Commerce AVERAGE price for the grade of gasoline selected, and 42-44 Kerosene, Group Three, as shown in Thursday's issue preceding date of shipment, plus 1/4¢ per gallon differential f.o.b. the Hutchinson, Kansas terminal.

TERMS: As approved by Seller on date of shipment.

It is mutually agreed that the Seller shall not be obligated to furnish goods hereunder in the event of strikes, fires, governmental authority, or other causes beyond its control.

After the execution of this contract and before its complete fulfillment, should any tax or other charge be imposed by any governmental authority or other agency upon any of the goods herein described, or on the sale, transportation, or delivery thereof, the amount of such tax or charge will be added to the prices for all deliveries thereafter made.

This contract shall not become valid until approved by an executive officer for the Champlin Refining Company, and when so executed, shall be deemed to contain all the terms of agreement between the parties, and no understandings or agreements thereto, no alterations thereof, or additions thereto, shall be recognized by, or be binding upon the Champlin Refining Company, unless reduced to writing and executed in the same manner.

Signed CHAMPLIN REFINING COMPANY

By R. A. Campbell
Salesman

Approved:

T. A. Snyder Jr.

Signed Frank & Young Oil Co

Date March 32 1941

By Elwin C. Frank
Floyd Young

543

390

EXHIBIT I (1)

CHAMPLIN REFINING COMPANY Nº 30663 SM
ENID, OKLAHOMA

Date 9-3-41

Ship to PUNK & YOUNG

OTC.-LFCL OR-LFCP WHEN [illegible]

Destination [illegible]

Route [illegible]

Invoice to [illegible]

Terms [illegible]

At [illegible]

F. O. B. Salesman 96

AMOUNT	UNIT		UNIT	PRICE
		CHAMPLIN		
8090		60-62-437 [illegible]	[illegible]	.05[illegible]

ORDER

Add. Federal Tax [illegible] State Tax [illegible] Inspection [illegible] Sales Tax no P. L. Differential .0[illegible]50

ORIGINAL Freight

Form C 80—[illegible]—3-41

544

391

EXHIBIT I (2)

CHAMPLIN REFINING COMPANY, ENID, OKLAHOMA HUTCHINSON

TERMS

INVOICE TO: FUNK & YOUNG
CONCORDIA KANSAS

S D B L FIDELITY NAT'L BANK

TAXES AND TRANSPORTATION CHARGES ALWAYS NET CASH

ORDERED BY PHONE PARKER 9/3/41 SALESMAN CAMPBELL OCT NO

QUANTITY	PRODUCT & SPECIFICATIONS	PRICE	F. O. B.
8,000 GALLONS	60-62 437 GASOLINE	CONTRACT 05375 .0025 gal dft	HUTCHINSON

SHIP TO FUNK & YOUNG WHEN AT ONCE

DESTINATION CONCORDIA KANSAS ROUTE AT&SF

FRT. & TRANSPORTATION FEDERAL TAX 1½¢ GALLON

STATE TAX INSP. FEE 1¢ BBL

INVOICE IN COPY INVOICE TO CAMPBELL

SPECIAL

SHIPPED CAR 643 DATE 9/3/41

RECEIVED SEP 6-1941

Order No. 197 G DEPT

545

392

EXHIBIT I (3)

Uniform Domestic ORDER Bill of Lading Adopted by Carriers in Official, Southern and Western Classification Territories, March 15, 1922, as amended August 1, 1930

THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing on record.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading

at Enid, Okla., HUTCHINSON Kas 9-3-43 193 — From CHAMPLIN REFINING COMPANY

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER Bill of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

Shipper's No._____

ATCHISON TOPEKA & SANTA FE Railroad Company Agent's No._____

(Mail or Street Address of Consignee—for Purpose of Notification Only)

Consigned to ORDER OF CHAMPLIN REFINING COMPANY

Destination CHANUTE KA State of Kas. County of _____

Notify PINK & YOUNG

At CHANUTE KA State of Kas. County of _____

Route ATCHISON TOPEKA & SANTA FE

Delivering Carrier _____ Car Initial ATSF Car No. 643

No. Packages	Description of Articles, Special Marks, and Exceptions	GALS.	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
	Petroleum and Products, Namely:				
1	T. C. Gasoline (Inflammable Placard)	8000	63394	.12	
	T. C. Refined Oil				
	T. C. Fuel Oil				
	T. C. Gas Oil				
	T. C. Lubricating Oil				
	T. C. Fuel Oil Distillate Not suitable for illuminating purposes.				

SHIPPER'S WEIGHT

(See section 7 of conditions.) If this order is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

CHAMPLIN REFINING CO.

Per _____
(Signature of Consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ _____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____
(The signature here acknowledges only the amount prepaid.)

		4			

Charges Advanced:

"Shipper's Imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission"

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

"If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

CHAMPLIN REFINING COMPANY, Shippers, Per _____ Agent

Permanent post-office address of shipper,
ENID, OKLA.

391

Per _____

548

393

EXHIBIT I (4)

CHAMPLIN REFINING COMPANY

LOADING REPORT

Date Sept. 8-41

Tank No. HHCK 643

Kind 60-62-437

Gravity 64D

Temperature 78°

In Dome Hill inches

Flash Fire

Capacity 8093 / 8002 Gallons

Loaded from Tank No. 2076

Seal No. 93658-59

Reclaim inches

W. M. [illegible] Rack Foreman

L. Partridge [illegible] Loader

Checker

[illegible]

Nº 138870 [illegible]

395

COPY

CH[illegible]PLIN REFINING COM[illegible]Y

REFER [illegible] CONDITIONS OF SALE ON THE REVERSE SIDE OF ORIGINAL INVOICE

[illegible]8194 HUTCH SAUD, OKLAHOMA SEP 5 41 SDBL

INVOICE NO BAMPBELL DATE TERMS

SALESMAN 14 YOUR ORDER

INTEREST AT 6 PER CENT IF NOT PAID WHEN DUE. TAXES AND TRANSPORTATION CHARGES ALWAYS NET CASH.

SOLD TO FUNK & [illegible]UNG
[illegible]NCORBIA KASAS

[illegible] USE

SEP [illegible]

BY

CONSIGNED TO SAME 18
AT SF

ROUTING

CAR OR TICKET NUMBER	PRODUCTS	DRUMS SOLD	GROSS GALLONS	TEMP. °F	NET GALLONS	PRICE	AMOUNT
D HHCX 643	GASO 60 62 457 1118		80 90	78	80 02	05375	430 11
	FED TAX				01329027		120 03
	INSPEC FEE				01321849		1 60
	DIFF				0253	0025	20 01
							571 75

This company and its subsidiaries have complied with the applicable provisions of the Federal Fair Labor Standards Act of 1938, in the production of the goods covered by this invoice.

4 548

EXHIBIT J

CHAMPLIN REFINING COMPANY

ENID, OKLAHOMA

Sales Contract (in duplicate) made on the 28th day of August, 1941, between the CHAMPLIN REFINING COMPANY, Enid, Oklahoma, hereinafter called Seller and JACK BROWN, Lewis, Kansas, hereinafter called Buyer.

The Buyer buys and the Seller sells for delivery during the period from October 1, 1941 to September 30, 1942, minimum of nine and maximum of eighteen cars Champlin gasoline at the Chicago Journal of Commerce AVERAGE for the grade of gasoline selected as shown in the Thursday's issue preceding date of shipment.

Minimum of 4 and maximum of 8 cars Champlin 42-44 Kerosene at the Average Chicago Journal of Commerce price for 42-44 Kerosene as shown in Thursday's issue preceding date of shipment.

If the above products are obtained from the Hutchinson, Kansas terminal, differential of 1/4¢ per gallon shall be added to the f.o.b. Enid price.

TERMS: As approved by Seller on date of shipment.

It is mutually agreed that the Seller shall not be obligated to furnish goods hereunder in the event of strikes, fires, governmental authority, or other causes beyond its control.

After the execution of this contract and before its complete fulfillment, should any tax or other charge be imposed by any governmental authority or other agency upon any of the goods herein described, or on the sale, transportation or delivery thereof, the amount of such tax or charge will be added to the prices for all deliveries thereafter made.

This contract shall not become valid until approved by an executive officer for the Champlin Refining Company, and when so executed, shall be deemed to contain all the terms of agreement between the parties, and no understandings or agreements thereto, no alterations thereof, or additions thereto, shall be recognized by or be binding upon the Champlin Refining Company, unless reduced to writing and executed in the same manner.

Signed CHAMPLIN REFINING COMPANY

By C W Lewis
Salesman

Approved: T. A. Snyder W

Signed

Date Oct 8 1941

By

549

396

CHAMPLIN REFINING COMPANY Nº 74029 SH
ENID, OKLAHOMA

Date 10-[illegible]-41

Ship to [illegible]
Destination [illegible] Kansas
Invoice to [illegible]
At [illegible]

OTC. - LPCL OR - LPCP 1021 WHEN [illegible]
Route [illegible]
Terms 1-10
P. O. B.
Salesman [illegible]

AMOUNT	UNIT		UNIT	PRICE
		CHAMPLIN		
606	3	42.70 [illegible]		[illegible]
1429	1 2	60-[illegible]-437	6	0537[illegible]
2035				

Add. Federal Tax Yes State Tax no Inspection Yes Sales Tax ORDER P. L. Differential 1/4

ORIGINAL Freight no

Form C 14—[illegible]

550

397

EXHIBIT "K" (2)

PIPELINE TERMINAL
LOADING TICKET

CHAMPLIN REFINING COMPANY, ENID, OKLAHOMA

PLACE LOADED Hutchinson Truck Rack TIME 9:15 AM DATE 10-5-41 ORDER NO. 74029

INVOICE TO [illegible]

ADDRESS [illegible]

DELIVERED TO S2MC
(USE DASHES TO SHOW DESTINATIONS)

R. R. OR TRUCK COMPANY OWN

ADDRESS S2MC

CAR NO. OR TRUCK NO. 1 TAG NO. T79-351 STATE KS LFCL NO. 1021

FROM TANK	COMPT.	PRODUCT	BBL. CASE DRUM—TIRE SIZE	TEMP.	GALLONS OR POUNDS			
2077	3	72-74 by ASTM			606			
2076	1-2	60-62 @ 437		66	1429			

SEAL NOS. OR MEMO 6 3535 - 3540 2 WCK

LOADER

RECEIVED the property described above in good order except as noted, marked, consigned and destined as indicated above. The undersigned carrier hereby certifies that he is duly authorized by the consignee to receive the above described merchandise as agent of the said consignee. It is agreed that delivery of the said merchandise to the Carrier shall constitute delivery to the consignee. It is further agreed that this may be used as a BILL of lading in lieu of the standard form prescribed by the Interstate Commerce Commission or by any controlling state law and is acceptable to shipper and carrier.

NAME OF TRUCK CO

ORIGINAL
FORWARD THIS COPY
TO GENERAL OFFICE

BY

3131
No 149711

551

Copy

REFER CONDITIONS OF SALE ON THE REVERSE SIDE OF ORIGINAL INVOICE

CLAIPLIN REFINING COMPANY

ENID, OKLAHOMA

INVOICE NO. 3131 HUTCH DATE OCT 5 41 TERMS 1-10

SALESMAN 52 YOUR ORDER

INTEREST AT 6 PER CENT IF NOT PAID WHEN DUE. TAXES AND TRANSPORTATION CHARGES ALWAYS NOT MADE.

FOR CUSTOMER'S USE

AUDITED
OCT - 6 1941
HH

SOLD TO JACK BROWN
LEWIS, KANSAS

18

CONSIGNED TO SAME
OWN

REMITTED

CAR OR TICKET NUMBER	PRODUCTS	GRUMS-SALE	GROSS GALLONS	TEMP. °F.	NET GALLONS	PRICE	AMOUNT
149711	GASO 72-74 ASTM 7186		606	66	604	.06125	3700
	GASO 60-62 7118		1429	66	1424	.05375	7654
							11354
					0132	902	3042
	FED TAX				0132	1849	41
	INSP FEE				0.25	0025	507
	DIFF						14944

This company and its subsidiaries have complied with the applicable provisions of the Federal Fair Labor Standards Act of 1938, in the production of the goods covered by this invoice.

4 552

399

[fol. 553] EXHIBIT "L" (1)

(Supplemental) L. A. Snyder

This Contract made and entered into this 13th day of January, 1941 at Enid, Oklahoma by and between the Champlin Refining Company, a Corporation existing under the laws of New Mexico, hereinafter called the First Party, and Farmers Union Coop. Supply Co. of Beatrice, Nebraska hereinafter called the Second Party.

Shipment to be made to Beatrice, Nebraska and to Odell, Nebraska.

The first party sells and agrees to deliver to second party and the second party purchases and agrees to accept from the first party on the terms and conditions hereinafter set forth the following described Petroleum products, to wit:

	Minimum Gallons	Maximum Gallons
Grade 1: Champlin Presto with "Q".	130,000	200,000
Grade 2: Champlin Ethyl Gasoline		
Grade 3: Champlin U. S. Motor	190,000	250,000
Kerosene, Champlin 42-44	120,000	120,000
Tractor Fuel, Nebr. specifications	130,000	175,000
Lubricating Oils (Mtr. & Tractor)	15,000	20,000

Shipments to be made to bulk plants operated by the Buyer at the following points:

Beatrice, Nebr. and Odell, Nebraska.

Terms. —— ——.

Invoice Price:

Refinery Invoice Price shall be based on the average price, Group Three, as shown in the Chicago Journal of Commerce, Thursday issue preceding date of shipment:

Gasoline: Grade 1, average U. S. Mtr. 72-74 octane, ASTM Method. Grade 2, Invoice Price of Grade 1, plus ¾¢ per gallon. Grade 3, average U. S. Motor, 60 octane and below.

Kerosene: Average 42-44 Kerosene.

Tractor Fuel: Low U. S. Motor 60 Octane and below.

Lubricating Oils: Champlin spot price F. O. B. Enid with maximum not to exceed 8¢ per gallon above todays' prices.

If, during the life of this contract, the gasoline price quotations be discontinued by the Chicago Journal of Commerce, the first party to this contract shall establish a spot

price of its own, until a publication or market reporter acceptable to both the first and second parties to this contract can be selected; further, if the method of determining anti-knock or octane rating, or the octane brackets in published prices or practices be changed, the grade of gasoline known as "regular" shall be applied on contract orders.

Grades 1 and 3 Gasoline, Kerosene and Tractor Fuel will be available at the Superior Terminal of the Seller, plus .01 per gallon differential, to Beatrice and .01099 per gallon to Odell.

The present posted differentials of .01 and .01099 are applicable until such time as an increase in rail rates shall dictate a higher differential based upon the difference between the through rate from Enid to destination and the posted rail rate from Superior to destination.

Grade 2 Gasoline will be shipped from Enid, Oklahoma in Sellers' 8,000 gallon or three compartment tank cars.

Lubricating oils will be available at Superior, Grand Island, Lincoln and Omaha at three cents per gallon above the F. O. B. Enid, Oklahoma price.

This Agreement shall be in force for a period commencing the 4th day of February, 1941, and ending the 3rd day of February, 1942.

[fol. 554] Sales Contract

All prices are subject to the addition of any taxes or charges imposed by the State or Federal Government, on any of the products bought and sold hereunder.

This contract shall not be binding upon the Champlin Refining Company, until signed in behalf of said Company by its Vice-President and when so executed, shall be deemed to contain all the terms of agreement between the parties, and no understandings or agreements thereto, no alterations thereof, or additions thereto, shall be recognized by, or be binding upon the Champlin Refining Company, unless reduced to writing and executed in the same manner.

This clause dated January 13, 1941 is hereby made a part of and has been signed concurrently with the signing of this contract of even date between the undersigned:

The prices set forth in this contract are subject to change as follows:

(a) In event of the depreciation of the currency of the United States by inflation, reduction of the gold content of

the dollar, issuance of fiat money, expansion of credit and/or Seller's costs be increased by the fixation of minimum wages and/or maximum hours of labor, increased costs of raw materials, or otherwise, said prices, at Seller's option, may be increased proportionately to the depreciation of the currency of the United States, and/or the increase of Seller's costs respectively.

(b) In event of a dispute or difference of opinion in regard to the applicability of (a) of this Clause to the price of any product covered by this contract, Seller, without prejudice to any of its rights in the premises, may suspend further shipments or deliveries hereunder of the product involved without, however, affecting the rights and obligations of the parties in regard to other products, the prices of which are not in dispute, by fifteen days' prior written notice and, in such case, if the contract be neither suspended nor terminated as herein provided, the prices for which Seller contends shall apply.

In Witness Whereof, the parties hereto have hereunto set their hands and seals this 18th day of January, 1941.

Champlin Refining Company, by Albert Shields, Representative of Party of First Part, Farmers Union Co.-Op. Supply Co., Party of Second Part, by Joseph H. Scheve, Pres.

Attest: F. L. Root, Secretary of Party of Second Part. G. L. Pheasant, Mgr.

Approved —— ——.

Champlin Refining Company, by L. A. Snyder, Vice-President.

(Here follows 5 photolithographs, side folios 555-559)

5-559

CHAMPLIN REFINING COMPANY Nº 54540 SM

ENID, OKLAHOMA

Date 10-9-41

Ship to Farmers U Coop Supply Co — OTC.-LFCL OR-LFCP — WHEN 10-10-41

Destination Beatrice, Nebr. — Route CB&Q FAIRBURY CRI&P

Invoice to Same — Terms 1-10

At Same — F. O. B. — Salesman 84

AMOUNT	UNIT		UNIT	PRICE
		CHAMPLIN		
8110	Gals	Presto 72-74 Octane ASTM	C	.06125
		60------8110		
			Diff	.01000
		HHCX 678 Ticket #142344		

Add. Federal Tax YES State Tax NO Inspection NO Sales Tax ORDER F/L Differential

ORIGINAL Freight NO

Form C 86—[illegible]

404A

555

CHAMPLIN REFINING COMPANY, ENID, OKLAHOMA

SUPERIOR

TERMS 1-10

INVOICE TO FARMERS UNION COOP SUPPLY
BEATRICE NEBRASKA

Sales 10-10-41

TAXES AND TRANSPORTATION CHARGES ALWAYS NET CASH

ORDERED BY W.U. WIRE 10/10/41 SALESMAN SHIELDS OCT 10

QUANTITY	PRODUCT & SPECIFICATIONS	PRICE	F. O. B.
8,000 GALLONS	72-74 OCTANE A S T M	CONTRACT 06.25	G 3

SHIP TO FARMERS UNION COOP SUPPLY WHEN AT ONCE

DESTINATION BEATRICE NEBR ROUTE CB&Q FAIRBURY NI

FRT. & TRANSPORTATION diff FEDERAL TAX 1½¢ GALLON

STATE TAX INSP. FEE

INVOICE IN COPY INVOICE TO SHIELDS

SPECIAL RATE 10-1/2¢

SHIPPED CAR 678 DATE

Order No. 798 G

556

40-11

EXHIBIT "M" (3)

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern and Western Classification Territories, March 15, 1932, as amended August 1, 1939.)

UNIFORM STRAIGHT BILL OF LADING

THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate covering the property named herein, and is intended solely for filing or record.

Shipper's No. _____

[illegible] _____ COMPANY

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading,

at [illegible] SUPERIOR [illegible] OCTOBER [illegible] 194__

From CHAMPLIN REFINING COMPANY

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only)

Consigned to [illegible] COOPERATIVE SUPPLY COMPANY

Destination [illegible] State of _____ County of _____

Route [illegible]

Delivering Carrier _____ Car Initial [illegible] Car No. [illegible]

No. Packages	Description of Articles, Special Marks, and Exceptions	GALS.	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
	Petroleum and Products, Namely:				
	T/C. Gasoline (Inflammable Placard)	[illegible]	[illegible]	[illegible]	
	T/C. Naphtha (Inflammable Placard)				
	T/C. Refined Oil				
	T/C. Fuel Oil				
	T/C. Lubricating Oil				
	T/C. Fuel Oil Distillate Not Suitable For Illuminating Purposes				
	This shipment is tendered and received subject to [illegible] and conditions of the Company's Uniform Bill [illegible] June 12, 1941.				

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

CHAMPLIN REFINING CO.

_____ (Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $_____ to apply in prepayment of the charges on the property described hereon.

_____ Agent or Cashier

Per _____ (The signature here acknowledges only the amount prepaid.)

Charges advanced:

4

"Shipper's Imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission"

$

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE — Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The Agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

CHAMPLIN REFINING COMPANY, Shippers

Per

Permanent post office address of shipper, ENID, OKLAHOMA

Agent

Per

557

40-C

EXHIBIT "M" (4)

CHAMPLIN REFINING COMPANY

LOADING REPORT

Date 10-11-41

Tank No. ~~20~~ HHCX 678.

Kind PR-STD 72-74 O.T ASTM

Gravity 62±

Temperature 60°

In Dome SHELL Inches

Flash Fire

Capacity 8110 (8110) Gallons

Loaded from Tank No. 2085.

Seal No. HHCXs 2715-16 INC

Inches

Sens
Rack Foreman

RATHBUN
Loader

193.10 53526
Checker

F.U.C. - P SUPPLY CO. 10-11-41
BEATRICE NEER

REF 10-38M-12-37-CROMWELL-10489

No. 142344 10-11-41

EXHIBIT "M" (5)

Copy

CHEAPLIN REFINING COMPANY

ENID, OKLAHOMA

INVOICE NO. 5249 SUPR 3 DATE OCT 11 41 TERMS 1-10

SALESMAN SHIELDS 84 TOWN ORDER

INTEREST AT 6 PER CENT IF NOT PAID WHEN DUE. TAXES AND TRANSPORTATION CHARGES ALWAYS NET CASH.

FOR CUSTOMER'S USE

AUDITED
OCT 14 1941
By 14

SOLD TO FARMERS UNION COOP SUPPLY
BEATRICE NEBR.

CONSIGNED TO SAME
CB&Q FAIRBURY RI

CAR OR TICKET NUMBER	PRODUCTS	DRUMS-COLS.	GROSS GALLONS	TEMP. °F.	NET GALLONS	PRICE	AMOUNT
O HHCX 698	GASO 72 74 ASTM FED TAX DIFF	1186	8110	60	8110 0132902 C 253	06125 01	496 74 121 65 81 10 699 49

This company and its subsidiaries have complied with the applicable provisions of the Federal Fair Labor Standards Act of 1938, in the production of the goods covered by this invoice.

4 391 55

559

404E

[fol. 560] EXHIBIT "N"

This Contract made and entered into this 25th day of February, 1941 at Enid, Oklahoma by and between the Champlin Refining Company, a Corporation existing under the laws of New Mexico, hereinafter called the First Party, and Amos Oil Company of Shelton, Nebraska hereinafter called the Second Party.

Shipment to be made to Shelton, Nebraska and to ——.

The first party sells and agrees to deliver to second party and the second party purchases and agrees to accept from the first party on the terms and conditions hereinafter set forth the following described Petroleum products, to wit:

	Minimum Gallons	Maximum Gallons
Grade 1: Champlin Presto with "Q"	75,000	125,000
Grade 2: Champlin Ethyl Gasoline		
Grade 3: Champlin U. S. Motor	30,000	60,000
Kerosene, Champlin 42-44	20,000	40,000
Tractor Fuel, Nebr. specifications	25,000	50,000
Lubricating Oils (Mtr. & Tractor)	1,000	2,500

Shipments to be made to bulk plants operated by the Buyer at the following points: Shelton Nebraska.

Terms: As approved by Seller on date of shipment.

Invoice Price:

Refinery Invoice Price shall be based on the average price, Group Three, as shown in the Chicago Journal of Commerce, Thursday issue preceding date of shipment:

Gasoline: Grade 1, average U. S. Mtr. 72-74 octane, ASTM Method. Grade 2, Invoice Price of Grade 1, plus ¾¢ per gallon. Grade 3, average U. S. Motor, 60 octane and below.

Kerosene: Average 42-44 Kerosene.

Tractor Fuel: Average U. S. Motor 60 Octane and below.

Lubricating Oils: Champlin spot price F. O. B. Enid with maximum not to exceed 8¢ per gallon above todays' prices.

If, during the life of this contract, the gasoline price quotations be discontinued by the Chicago Journal of Commerce, the first party to this contract shall establish a spot price of its own, until a publication or market reporter acceptable to both the first and second parties to this con-

tract can be selected; further, if the method of determining anti-knock or octane rating, or the octane brackets in published prices or practices be changed, the grade of gasoline known as "regular" shall be applied on contract orders.

Grades 1 and 3 Gasoline, Kerosene and Tractor Fuel will be available at the Superior Terminal of the Seller, plus .0115 per gallon differential.

The present posted differential of .0115 is applicable until such time as an increase in rail rates shall dictate a higher differential based upon the difference between the through rate from Enid to destination and the posted rail rate from Superior to destination.

Grade 2 Gasoline will be shipped from Enid, Oklahoma in Sellers' 8,000 gallon or three compartment tank cars.

Lubricating oils will be available at Superior, Grand Island, Lincoln and Omaha at three cents per gallon above the F. O. B. Enid, Oklahoma price.

This Agreement shall be in force for a period commencing the 25th day of March, 1941, and ending the 24th day of March, 1942.

[fol. 561] Sales Contract

All prices are subject to the addition of any taxes or charges imposed by the State or Federal Government, on any of the products bought and sold hereunder.

This contract shall not be binding upon the Champlin Refining Company, until signed in behalf of said Company by its Vice-President and when so executed, shall be deemed to contain all the terms of agreement between the parties, and no understandings or agreements thereto, no alterations thereof, or additions thereto, shall be recognized by, or be binding upon the Champlin Refining Company, unless reduced to writing and executed in the same manner.

This clause dated February 25, 1941, is hereby made a part of and has been signed concurrently with the signing of this contract of even date between the undersigned:

The prices set forth in this contract are subject to change as follows:

(a) In event of the depreciation of the currency of the United States by inflation, reduction of the gold content of the dollar, issuance of fiat money, expansion of credit and/or Seller's costs be increased by the fixation of minimum wages

and/or maximum hours of labor, increased costs of raw materials, or otherwise, said prices, at Seller's option, may be increased proportionately to the depreciation of the currency of the United States, and/or the increase of Seller's costs respectively.

(b) In event of a dispute or difference of opinion in regard to the applicability of (a) of this Clause to the price of any product covered by this contract, Seller, without prejudice to any of its rights in the premises, may suspend further shipments or deliveries hereunder of the product involved without, however, affecting the rights and obligations of the parties in regard to other products, the prices of which are not in dispute, by fifteen days' prior written notice and, in such case, if the contract be neither suspended nor terminated as herein provided, the prices for which Seller contends shall apply.

In Witness Whereof, the parties hereto have hereunto set their hands and seals this —— day of ——, 194—.

Champlin Refining Company, by Paul Crawford, Representative of Party of First Part. Amos Oil Co., Party of Second Part, by W. E. Amos.

Attest: —— ——, Secretary of Party of Second Part.

Approved —— ——.

Champlin Refining Company, by L. A. Snyder, Vice-President.

(Here follow 3 photolithographs, side folios 562-564)

EXHIBIT "O" (1)

CHAMPLIN REFINING COMPANY Nº 54004 SH

Date 9-30-41

Sold W. E. Amos

OTC-LPCL OR-LPCP 890 WHEN

Destination Shelton Neb.

Route L. D. Essinger

Invoice to —

Terms C.O.D.

At —

F.O.B.

Salesman 20

EXHIBIT "O" (1)

AMOUNT	UNIT			UNIT	PRICE
		CHAMPLIN			
1095		1092 39-41 Distillate	C		04125
515		513 42-44 Kerosene	C		04625
495		493 60-62 U S Motor	C		05375
2035		2028 72-74 Oil Tanks	C		06125
4140					

Add. Federal Tax Gen State Tax No Inspection No Sales Tax No P. L. Differential 01150

ORIGINAL Freight

Form C 56—3/42—3-41

562

408A

EXHIBIT "O" (2)

PIPELINE TERMINAL
LOADING TICKET
CHAMPLIN REFINING COMPANY, ENID, OKLAHOMA

PLACE LOAD'D Superior Truck Rack TIME 3:40 AM DATE 9-30-41 ORDER NO. 54004

INVOICE TO W. E. Ames

ADDRESS Shelton Nebr.

DELIVERED TO Same (BE SURE TO SHOW DESTINATION)

R. R. OR TRUCK COMPANY F. D. Ellinger

ADDRESS Holstein Nebr.

CAR NO. OR TRUCK NO. TAG NO. 14 Ow 2055 STATE Nebr. LFCP NO. 890

FROM TANK	BURSES	PRODUCT	BBL. CASE DRUM—TIRE SIZE	TEMP.	GALLONS OR POUNDS			
25		39-41 Distillate (Blue)		66	1095	#1		
2125		43-44 Kerosene		66	515	#2		
2084		60-62 U.S. Motor		66	495	#3		
2085		72-74 Octane F 5741		66	2035	#4		

SEAL NOS. OR MEMO [illegible] 35363 & 72 Trial

LOADER Thompson

RECEIVED the property described above in good order except as noted, marked, consigned and destined as indicated above. The undersigned carrier hereby testifies that he is duly authorized by the consignee to receive the above described merchandise as agent of the said consignee. It is agreed that delivery of the said merchandise to the Carrier shall constitute delivery to the consignee. It is further agreed that this may be used as a bill of lading in lieu of the standard form prescribed by the Interstate Commerce Commission or by any controlling state law and is acceptable to consignor and carrier.

ORIGINAL
FORWARD THIS COPY
TO GENERAL OFFICE

NAME OF TRUCK CO. F. D. Ellinger

BY [illegible]

A 22004

391

EXHIBIT "O" (3)

COPY

REFER CONDITIONS OF SALE ON THE REVERSE SIDE OF ORIGINAL INVOICE

CHAPLIN REFINING COMPANY

ENID, OKLAHOMA

INVOICE NO. 2642 SUPR DATE SEP 29 41 TERMS COD

SALESMAN 20 YOUR ORDER

INTEREST AT 8 PER CENT IF NOT PAID WHEN DUE. TAXES AND TRANSPORTATION CHARGES ALWAYS NET CASH.

FOR CUSTOMER'S USE

SOLD TO W E AMOS
SHELTON NEBR.

CONSIGNED TO SAME
ROUTING W L D ESSINGER

CAR OR TICKET NUMBER	PRODUCTS	DRUMS-BBLS.	GROSS GALLONS	TEMP. °F	NET GALLONS	PRICE	AMOUNT
22004	DIST 39 41 P 1 7339		1095	66	1092	04125	45 05
	KERO 42 44 1344		515	66	513	04625	23 73
	GASO 60 62 1118		495	66	493	05375	26 50
	GASO 72 74 ASTM 1186		2035	66	2028	06125	124 22
							219 50
			0132902		FED TAX		37 82
			0253		TX DIFF	0115	47 45
							304 77

This company and its subsidiaries have complied with the applicable provisions of the Federal Fair Labor Standards Act of 1938, in the production of the goods covered by this invoice.

564

408C

[fol. 565] Sales Contract

This Contract made and entered into this 25th day of February, 1941 at Enid, Oklahoma, by and between the Champlin Refining Company, a Corporation existing under the laws of New Mexico, hereinafter called the First Party, and Harmon Oil Company of Carthage, S. Dakota hereinafter called the Second Party.

Shipments to be made to the following points, subject to the differential appearing after the name of each destination.

Destination:	Champlin Iowa Differential:	Destination	Champlin Iowa Differential:
Carthage, S. Dak.	.02508 per gallon		

The products covered by this contract shall in all cases be delivered to one of the destinations shown immediately above this paragraph. The differential to be charged appears in conjunction with each destination. The declared destination and differential must be shown on each transport loading ticket or manifest at time of loading and shall be signed by the Buyer or his agent.

The method of transportation shall be at the option of the Buyer.

Failure to comply with the declared destination rule shall be sufficient reason for the cancellation of this contract on five days written notice by the Seller to the Buyer. This contract is not transferable without the written consent of the Seller.

Pump globes, signs and other advertising materials loaned by the Seller to the Buyer will be returned to the Seller upon request.

The first party sells and agrees to deliver to second party and the second party purchases and agrees to accept from the first party on the terms and conditions hereinafter set forth the following described petroleum products, to wit:

	Minimum Gallons	Maximum Gallons
Grade 1. Champlin Presto with "Q"	30,000	40,000
Grade 2. Champlin Ethyl Gasoline		
Grade 3. Champlin U. S. Motor	30,000	40,000
Kerosene, Champlin 42-44	16,000	24,000
Lubricating Oils, (Mtr. & Tractor)	1,000	3,000
Grease in pounds	1,000	2,000

EXHIBIT "Q" (1)

CHAMPLIN REFINING COMPANY, ENID OKLAHOMA

ROCK RAPIDS

TERMS

INVOICE TO: HARMON OIL COMPANY
CARTHAGE SOUTH DAKOTA

Sale 7-16-41

S D B L FARMERS STATE BANK

Okla

TAXES AND TRANSPORTATION CHARGES ALWAYS AT BUYER'S

ORDERED BY W.U. WIRE 7/16/41 SALESMAN BAUDER OCT NO

QUANTITY	PRODUCT & SPECIFICATIONS	PRICE CONTRACT	F.O.B.
8,000 GALLONS	42-44 KEROSENE	04625 D-102142	CHAMPLIN IOWA

SHIP TO HARMON OIL COMPANY WHEN AT ORDER

DESTINATION CARTHAGE SOUTH DAKOTA ROUTE RI SIOUX FALLS OTTUMWA SALES CREW

FRT. & TRANSPORTATION FEDERAL TAX

STATE TAX INSP. FEE

INVOICE IN COPY INVOICE TO

SPECIAL ACCOUNTING DEPT.

SHIPPED CAR 628 DATE

RECEIVED JUL 21 1941

Order No 166 K

567

412

EXHIBIT "Q" (2)

CHAMPLIN REFINING COMPANY Nº 33211 SH

ENID, OKLAHOMA

Date 7-16-41

Ship to Harmon Oil Co.

OTC.-LPCL OR-LPCP WHEN 7-16-41

Destination Carthage, S. Dakota

Route CRIAP SIOUX FALLS [illegible] SALEM CaNW

Invoice to Same

Terms EDnL

At Same

F. O. B. Salesman 7

AMOUNT	UNIT			UNIT	PRICE
		CHAMPLIN			
8113	Gal	42-44 Kerosene	C	.04625	
		72——8065	Diff.	[illegible]	
				.01245	
		EMCX 628	Loading Report #154227		

ORDER

Add. Federal Tax No State Tax No Inspection No Sales Tax P. L. [illegible]

ORIGINAL Freight No

dup 02145

568

413

EXHIBIT "Q" (3)

CHAMPLIN REFINING COMPANY

LOADING REPORT

Date 7-16-91

Tank No. HHCX ~~25~~ 628

Kind 42-49 Kerosene

Gravity 43.5

Temperature 72°

In Dome _____ Inches

Flash _____ Fire _____

Capacity 8113 (8065) Gallons

Loaded from Tank No. 2517

Seal No. HHCX RR-12815-16

Reclaim _____ Inches

RRD
Rack Foreman

Earl
Loader

192.02 8113
Checker

Harmon Oil Co Carthage, S.D.
REFIN. COMP. & CONSUMER PRICE

Nº 154227

7-16-91

EXHIBIT "Q" (4)

Uniform Domestic ORDER Bill of Lading Adopted by Carriers in Official, Southern and Western Classification Territories, March 15, 1922, as amended August 1, 1930

THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing on record.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading

at Enid, Okla. [illegible] 193[illegible] **From CHAMPLIN REFINING COMPANY**

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to the usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original Bill of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

Shipper's No.

C. I. & P. Railroad Company Agent's No.

(Mail or Street Address of Consignee—for Purpose of Notification Only)

Consigned to ORDER OF CHAMPLIN REFINING COMPANY

Destination [illegible], SOUTH DAKOTA State of County of

Notify HANSON OIL COMPANY

At [illegible], SOUTH DAKOTA State of County of

Route [illegible] Car Initial [illegible] Car No. [illegible]

Delivering Carrier

No. Packages	Description of Articles, Special Marks, and Exceptions	GALS.	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
	Petroleum and Products, Namely:				
	T/C. Gasoline (Inflammable Placard)				
1	T/C. Refined Oil	8113	[illegible]	.10½	
	T/C. Fuel Oil				
	T/C. Gas Oil				
	T/C. Lubricating Oil				
	T/C. Fuel Oil Distillate Not suitable for blending purposes.				

(See section 7 of conditions.) If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

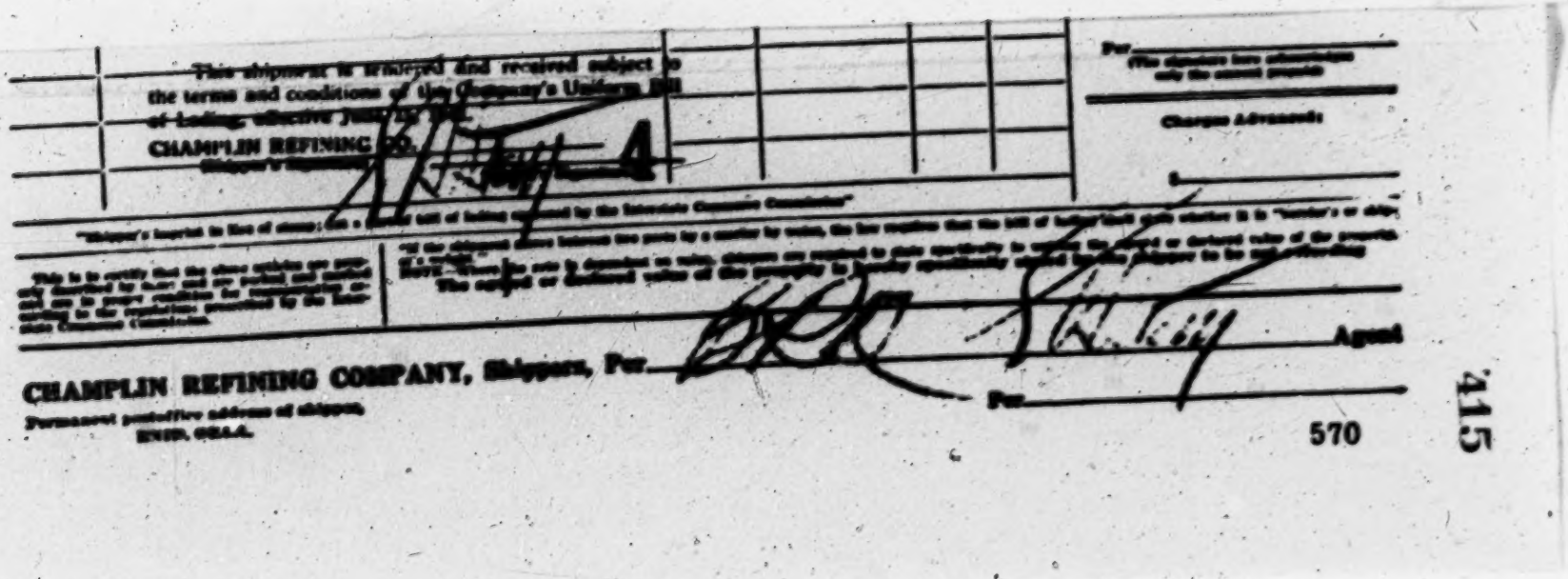
CHAMPLIN REFINING CO.

Per (Signature of Consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier



This shipment is tendered and received subject to the terms and conditions of the Company's Uniform Bill of Lading, effective June 15, 1941.

CHAMPLIN REFINING CO.
Shipper's Signature

4

Per _____
(The signature here acknowledges only the amount prepaid)

Charges Advanced:

$ _____

"Shipper's imprint in lieu of stamp; not a [illegible] bill of lading approved by the Interstate Commerce Commission"

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

"If the shipment above between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____

CHAMPLIN REFINING COMPANY, Shippers, Per _____ Agent

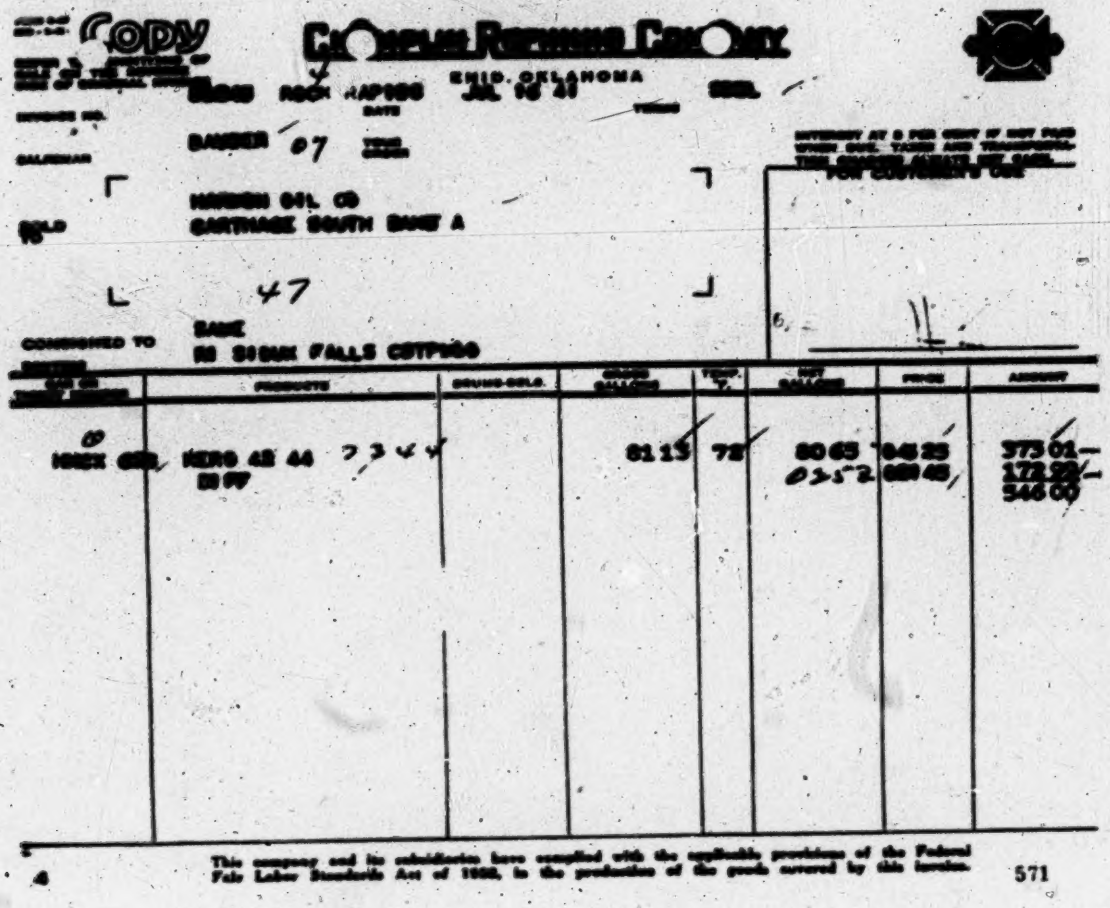
Permanent postoffice address of shipper,
ENID, OKLA.

Per _____

570

415

EXHIBIT "Q" (5)



Copy

Champlin Refining Company

ENID, OKLAHOMA

INVOICE NO.	ROCK RAPIDS	JUL 16 41	
SALESMAN	DAUGER 07		
SOLD TO	HARDEN OIL CO CARTHAGE SOUTH BANK A 47		
CONSIGNED TO	SAME RI SIOUX FALLS CSTPMGO		

INTEREST AT 8 PER CENT IF NOT PAID WHEN DUE. TAXES AND TRANSPORTATION CHARGES ALWAYS NOT CASH.

FOR CUSTOMER'S USE

CAR OR TRUCK NUMBER	PRODUCTS	DRUMS-GOLD	GROSS GALLONS	TEMP. °F.	NET GALLONS	PRICE	AMOUNT
0 HNCX [illegible]	KERO 42 44 7344 DIFF		8113	72	8065 0352	04525 02045	37301— 17292— 54600

This company and its subsidiaries have complied with the applicable provisions of the Federal Fair Labor Standards Act of 1938, in the production of the goods covered by this invoice.

4

571

[fol. 572] Sales Contract

This Contract made and entered into this 28th day of June 1941 at Enid, Oklahoma by and between the Champlin Refining Company, a Corporation existing under the laws of New Mexico, hereinafter called the First Party, and Daggett Implement Co. of Frazee, Minnesota hereinafter called the Second Party.

Shipments to be made to the following points, subject to the differential appearing after the name of each destination. Each differential is subject to revision, when and if through rates from Group 3 are revised, and shall be applicable on date designated by first party.

Destination	Champlin Iowa Differential:	Destination:	Champlin Iowa Differential:
Frazee, Minnesota	.01254 per gallon		
Park Rapids, Minn.	.01188 per gallon		

The products covered by this contract shall in all cases be delivered to one of the destinations shown immediately above this paragraph. The differential to be charged appears in conjunction with each destination. The declared destination and differential must be shown on each transport loading ticket or manifest at time of loading and shall be signed by the Buyer or his agent.

The method of transportation shall be at the option of the Buyer.

Failure to comply with the declared destination rule shall be sufficient reason for the cancellation of this contract on five days written notice by the Seller to the Buyer. This contract is not transferable without the written consent of the Seller.

Pump globes, signs and other advertising materials loaned by the Seller to the Buyer will be returned to the Seller upon request.

The first party sells and agrees to deliver to second party and the second party purchases and agrees to accept from the first party on the terms and conditions hereinafter

set forth the following described petroleum products, to wit:

	Minimum Gallons	Maximum Gallons
Grade 1. Champlin Presto with "Q"	300,000	450,000
Grade 2. Champlin Ethyl Gasoline	.....	.....
Grade 3. Champlin U. S. Motor	150,000	200,000
Kerosene, Champlin 42-44	20,000	30,000
Lubricating Oils (Mtr. & Tractor)	.....	.....
Grease in pounds	.....	.....

Terms: ——.

Invoice Price:

Refinery Invoice Price shall be based on the average price, Group 3, as shown in the Chicago Journal of Commerce, Thursday issue preceding date of shipment:

Gasoline: Grade 1, average for U. S. Mtr. 72-74 octane, ASTM Method;
Grade 2, Invoice price of Grade 1, plus ¾¢ per gallon;
Grade 3, average for U. S. Mtr. 60 octane and below;

Kerosene: average for 42-44 Kerosene;
Lubricating Oils: Champlin spot price F. O. B. Enid with maximum not to exceed 8¢ per gallon above today's prices.
All grades Champlin greases at prices shown in Price List in effect date of shipment.

If, during the life of this contract, the gasoline price quotations be discontinued by the Chicago Journal of Commerce, the first party to this contract shall establish a spot price of its own, until a publication or market reporter acceptable to both the first and second parties to this contract can be selected; further, if the method of determining anti-knock or octane rating, or the octane brackets in published prices or practices be changed, the grade of gasoline shown as "Champlin Regular" shall be applied on contract orders.

[fol. 573] Sales Contract

Grade 2 Gasoline will be shipped from Enid, Oklahoma in Sellers' 8,000 gallon or three compartment tank cars.

Lubricating oils will be available at the Champlin, Iowa terminal at 4¢ per gallon above the f. o. b. Enid, Oklahoma

price, and all grades of Champlin greases will be available at the Champlin, Iowa terminal at ½¢ per pound above the Enid price.

This agreement shall be in force for a period commencing the 15th day of July, 1941, and ending the 14th day of July, 1942.

All prices are subject to the addition of any taxes or charges imposed by the State or Federal Government, on any of the products bought and sold hereunder.

This contract shall not be binding upon the Champlin Refining Company, until signed in behalf of said Company by its Vice-President, and when so executed, shall be deemed to contain all the terms of agreement between the parties, and no understandings or agreements thereto, no alterations thereof or additions thereto shall be recognized by or be binding upon the Champlin Refining Company, unless reduced to writing and executed in the same manner.

This clause dated June 28, 1941, is hereby made a part of and has been signed concurrently with the signing of this contract of even date between the undersigned:

The prices set forth in this contract are subject to change as follows:

(a) In event of the depreciation of the currency of the United States by inflation, reduction of the gold content of the dollar, issuance of fiat money, expansion of credit and/or Seller's costs be increased by the fixation of minimum wages and/or maximum hours of labor, increased costs of raw materials, or otherwise, said prices, at Seller's option, may be increased proportionately to the depreciation of the currency of the United States, and/or the increase of Seller's costs respectively.

(b) In event of a dispute or difference of opinion in regard to the applicability of (a) of this Clause to the price of any product covered by this contract, Seller, without prejudice to any of its rights in the premises, may suspend further shipments or deliveries thereunder of the product involved until the dispute be settled, or either party may terminate this contract in respect to the product involved without, however, affecting the rights and obligations of the parties in regard to other products, the prices of which are not in dispute, by fifteen days' prior written notice and, in such case, if the contract be neither suspended nor

terminated as herein provided, the prices for which Seller contends shall apply.

In Witness Whereof, the parties hereto have hereunto set their hands and seals this —— day of ——, 19—.

Champlin Refining Company, by J. C. Duggan, Representative of Party of First Part; Daggett Impl. Co., Party of Second Part, by D. H. Daggett.

Approved: —— ——. Champlin Refining Company, by L. A. Snyder, Vice-President. Aug. 4, 1941.

EXHIBIT "S" (1)

CHAMPLIN REFINING COMPANY Nº 36965 SF

ENID, OKLAHOMA

Date [illegible]

Ship to Daggett Implement Co. OTC.-LFCL [illegible] OR-LFCP [illegible] WHEN

Destination Park Rapids Minn. Route [illegible]

Invoice to Same Terms 1-100

At Frazee Minn. F.O.B. Salesman [illegible]

AMOUNT	UNIT		UNIT	PRICE
		CHAMPLIN		
3500	3513	Presto [illegible]		06125
				04188

ORDER

Add. Federal Tax [illegible] State Tax [illegible] Inspection [illegible] Sales Tax [illegible] P. L. Differential [illegible]

ORIGINAL Freight [illegible]

Form C 36—[illegible]

574

421

EXHIBIT "S" (2)

PIPELINE TERMINAL
LOADING TICKET
CHAMPLIN REFINING COMPANY, ENID, OKLAHOMA

PLACE LOADED Champlin, Rock Rapids, Iowa TIME 6:30 PM DATE 10-1-41 ORDER NO. 3696

INVOICE TO Daggett Implement Co

ADDRESS Frazee, Minn

DELIVERED TO Park Rapids, Minn
(BE SURE TO SHOW DESTINATION)

R. R. OR TRUCK COMPANY own

ADDRESS Same PO 114

CAR NO. OR TRUCK NO. 1 TAG NO. Y 7999 STATE Minn LPGL NO. MVI 7446

FROM TANK	NUMBER	PRODUCT	BBL. CASE DRUM—TIRE SIZE	TEMP.	GALLONS OR POUNDS			
7514		Presto 7-2-74 Ash	Ast m	54	3500			

SEAL NOS. OR MEMO Minn Insp # 54666-69 INCL

LOADER Daniel

RECEIVED the property described above in good order except as noted, marked, consigned and destined as indicated above. The undersigned agrees hereby [illegible] that he is duly authorized by the consignee to receive the above described merchandise as agent of the said consignee. It is agreed that delivery of the said merchandise to the Carrier shall constitute delivery to the consignee. It is further agreed that this may be used as a bill of lading in lieu of the standard form prescribed by the Interstate Commerce Commission or by any controlling state law and is acceptable to consignee and carrier.

ORIGINAL
FORWARD THIS COPY TO GENERAL OFFICE

NAME OF TRUCK CO.

BY [illegible]

No. 11854

EXHIBIT "S" (3)

Copy

C. Daplin Refining Co. Inc.

ENID, OKLAHOMA

3282 , 4

INVOICE NO. [illegible] ROCK RAPIDS OCT 1 [illegible] 1-10

SALESMAN 91

SOLD TO DAGGETT IMPLEMENT CO
FRAZEE MINN

CONSIGNED TO PARK 27
ROCK RAPIDS MINN

AUDITED

[illegible]	PRODUCTS	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
11854	GASD 72-74 ASTM 7186		35 00	54	35 13	[illegible]	215 17
	FED TAX				11 33	027	58 70
	DIFF				025	[illegible]	41 72
							309 [illegible]

This company and its subsidiaries have complied with the applicable provisions of the Federal Fair Labor Standards Act of 1938, in the production of the goods covered by this invoice.

4

576

EXHIBIT "T" (1)

CHAMPLIN REFINING COMPANY No. 37422 SH

ENID, OKLAHOMA

Date 10-17-41

Ship to J J O CONKELL

OTC.-LPCL OR-LPCP 146 8569 WHEN 10-19-41

Destination ~~[illegible]~~ St Thomas, Minn

Route CRC 83-25

Invoice to SAME

Terms C COD

At ~~[illegible]~~ Le Sueur, Minn

F.O.B.

Salesman ~~[illegible]~~ 25

AMOUNT	UNIT		UNIT	PRICE
		CHAMPLIN		
2000	2007 gal	PRESTO 72-74- OCT ASTM		
500	501 gal	60-62-437- US MOTOR		
1250	1253 gal	39-41- DISTILLATE (LTGREEN)		
		PRODUCTS PRICED FOB DEST		

Add. Federal Tax NES State Tax NO Inspection NO Sales Tax ORDER P. L. Differential

ORIGINAL Freight NO

Form C 10—[illegible]

EXHIBIT "T" (2)

PIPELINE TERMINAL
LOADING TICKET
CHAMPLIN REFINING COMPANY, ENID, OKLAHOMA

PLACE LOADED: CHAMPLIN, ROCK RAPIDS, IOWA TIME: 6:30 DATE: [illegible] ORDER NO. 34422

INVOICE TO: [illegible]

ADDRESS: [illegible]

DELIVERED TO: R.R. [illegible] (SEE DUNE TO SHOW DESTINATION)

R. R. OR TRUCK COMPANY: [illegible] 83-25

ADDRESS: Rock Rapids, Iowa

CAR NO. OR TRUCK NO. #25 TAG NO. 607803 STATE: Iowa LPCL NO. [illegible] 8564

FROM TANK	NUMBER	PRODUCT	BBL. CASE DRUM—TIRE SIZE	TEMP.	GALLONS OR POUNDS			
2515		Presto 72-74 Oct	USTM	54	2000			
2519		60-62-437 N.S.	Mat.	56	500			
2517		39-41 [illegible]	[illegible]	56	1250			
F	48	Product [illegible]						

SEAL NOS. OR MEMO: [illegible] 146942-53 [illegible]

LOADER: [illegible]

RECEIVED the property described above in good order except as noted, marked, consigned and destined as indicated above. The undersigned carrier hereby certifies that he is duly authorized by the consignee to receive the above described merchandise as agent of the said consignee. It is agreed that delivery of the said merchandise to the Carrier shall constitute delivery to the consignee. It is further agreed that this may be used as a bill of lading in lieu of the standard form prescribed by the Interstate Commerce Commission or by any controlling state law and is acceptable to consignee and carrier.

ORIGINAL
FORWARD THIS COPY TO GENERAL OFFICE

NAME OF TRUCK CO. [illegible] 83-25

BY [illegible]

Nº 13285

Copy

Champlin Refining Company

ENID, OKLAHOMA

INVOICE NO. 6177 ROCK BARND OCT 19 41 TERMS C O D

CALENDAR 25 YOUR ORDER

INTEREST AT 8 PER CENT IF NOT PAID WHEN DUE. TAXES AND TRANSPORTATION CHARGES ALWAYS NET CASH.

FOR CUSTOMER'S USE

SOLD TO J J OCONNELL
RURAL ROUTE
38 LE SUEUR MINN

CONSIGNED TO ST THOMAS MINN

CAR OR TRUCK NUMBER	PRODUCTS	DRUMS-BOLS	GROSS GALLONS	TEMP. °F.	NET GALLONS	PRICE	AMOUNT
13284	GASO 72-74 ASTM		20 00	54	20 07	08567	171 94
	GASO 60-62		5 00	56	5 01	07817	39 16
	DIST 39-41		12 50	56	12 53	06567	82 28
							293 38
	FED TAX						37 62
							331 00
	F O B ST THOMAS MINN						

4

This company and its subsidiaries have complied with the applicable provisions of the Federal Fair Labor Standards Act of 1938, in the production of the goods covered by this invoice.

579

426

[fol. 580] Ex. 16

. . . . . .

[fol. 581] CERTIFICATE OF INCORPORATION

Champlin Refining Company

. . . . . .

3. The purposes of the corporation are:

To buy, sell and transfer mineral mining leases.

To produce, buy, sell and transport petroleum, natural gas and other minerals.

To refine petroleum.

To buy, sell and deal in the refined products of petroleum.

To engage in manufacturing, mechanical, mining and quarrying business.

To purchase, hold, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this, or any other state, or territory, or country, with power and privilege of ownership and the right to vote thereon.

To hold, purchase, mortgage and convey real estate and personal property.

To create two or more kinds of stock with such classes and with such designations, preferences and voting powers, or restrictions or qualifications thereof as shall be fixed and determined in this certificate or any amendment thereto, or by vote of the stock holders at a meeting duly called for the purpose.

To issue bonds secured by mortgage upon the corporate property if deemed needful or for the best interest of the corporation.

To purchase mines, manufactories and other property necessary for its business and the stock of any company or companies owning, mining, manufacturing or producing materials or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and to likewise issue stock for services rendered to the corporation, and the stock so issued shall be full paid stock and not liable to any further call or payment thereon, and the judgment of the directors honestly exercised as to

the value of the property so purchased, or services rendered to be conclusive.

To all things incident to, or necessary for the exercise of the powers herein conferred, not inconsistent or in conflict with the laws of the State of New Mexico, or against the public policy or welfare of said state.

[fol. 582] EXHIBIT 18

[fols. 583-587] AMENDED CERTIFICATE OF INCORPORATION

Cimarron Valley Pipe Line Company

* * * * * * *

3. The purposes of the corporation are:

To buy, sell, own, hold, construct, maintain and operate pipe lines and easements for pipe lines for the transportation of oil, gas and petroleum products.

To produce, buy, sell, own and hold oil, gas, and petroleum products.

To buy, sell and transfer mineral mining leases.

To refine petroleum.

To engage in manufacturing, mechanical, mining and quarrying business.

To purchase, hold, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this, or any other state, or territory, or country, with power and privilege of ownership and the right to vote thereon.

To hold, purchase, mortgage and convey real estate and personal property.

To create two or more kinds of stock with such classes and with such designations, preferences and voting powers, or restrictions or qualifications thereof as shall be fixed and determined in this certificate or any amendment thereto, or by vote of the stockholders at a meeting duly called for the purpose.

To issue bonds secured by mortgage upon the corporate property if deemed needful or for the best interest of the corporation.

To purchase mines, manufactories and other property necessary for its business and the stock of any company or companies owning mining, manufacturing or producing materials or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and to likewise issue stock for services rendered to the corporation, and the stock so issued shall be full paid stock and not liable to any further call or payment thereon, and the judgment of the directors honestly exercised as to the value of the property so purchased, or services rendered shall be conclusive.

To all things incident to, or necessary for the exercise of the powers herein conferred, not inconsistent or in conflict with the laws of the State of New Mexico, or against the public policy or welfare of said state.

(Here follow 3 photolithographs, side folios 588-590, 591, 592.)

EXHIBIT 21

STATE OF KANSAS

OFFICE OF THE SECRETARY OF STATE

To Whom it May Concern:

THIS IS TO CERTIFY, That the CIMARRON VALLEY PIPE LINE COMPANY

a foreign corporation, organized under the laws of the STATE *of* NEW MEXICO, *has complied with the laws of the State of Kansas relating to such corporations, and is authorized to engage in business in this State as a foreign corporation.*

Witness my hand and seal.

Frank J. Ryan
Secretary of State.

Done at the City of Topeka, this TWENTIETH *day of* FEBRUARY, *1935*

588 - 590

Harry R. Swanson
Secretary of State

Jet P. Tokes
Deputy

Department of State

626

I, Harry R. Swanson, Secretary of State of the State of Nebraska, do hereby certify that

CIMARRON VALLEY PIPE LINE COMPANY, a New Mexico corporation with principal business office at Enid, Oklahoma, on April 1, 1935, filed all instruments in this office required by Section 24-1201 of the Compiled Statutes of Nebraska and all instruments thereto, pertaining to the qualification of foreign corporations to do business in this state; and such instruments are filed in Book 9 relating to foreign corporations.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska. Done at Lincoln this 1st day of April, in the year of our Lord, one thousand nine hundred and thirty - five.

Secretary of State

Deputy

State Corporation Commission

STATE OF KANSAS

COMMISSIONERS

HOMER HOCH J. W. GREENLEAF
ERNEST E. BLINCOE

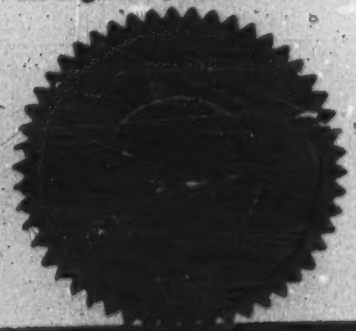
To all to Whom these Presents shall Come, Greeting:

I, C. H. BENSON, Secretary of the State Corporation Commission of the State of Kansas, do hereby certify that the following and hereto attached is a true copy of CERTIFICATE

In the matter of the application of the Cimarron Valley Pipe Line Company for a certificate of convenience and authority to transact the business of a common carrier (Interstate) in the State of Kansas.

Docket No. 15,628

the original of which is now on file and a matter of record in this office.



In Testimony Whereof, I hereto set my hand and cause to be affixed the seal of the State Corporation Commission.

Done at the city of Topeka, this 28th day of February A. D. 1935

Secretary, State Corporation Commission.

430C

592

[fol. 593] BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Docket No. 15,628

In the Matter of the Application of the CIMARRON VALLEY PIPE LINE COMPANY for a certificate of convenience and authority to transact the business of a common carrier (Interstate) in the State of Kansas

CERTIFICATE

Be It Remembered, on this 23rd day of February, 1935, the above entitled matter comes on for final determination by the Commission, and the Commission having given due consideration to said application and the testimony introduced thereunder, and being fully advised in the premises, finds that public convenience will be promoted by the Cimarron Valley Pipe Line Company transacting the business of a common carrier (Interstate) in the State of Kansas, and that therefore a certificate should be issued to said company in accordance with provisions of Section 66-131, R. S. 1923.

It Is, Therefore, By the Commission Considered and Certified: That public convenience will be promoted by the Cimarron Valley Pipe Line Company of Enid, Oklahoma, transacting the business of a common carrier (Interstate) for the construction, maintenance and operation of a pipe line for the transportation of petroleum and its products (primarily gasoline) together with telephone and telegraph lines as is necessary for the transaction of said business, and other necessary and related equipment across the State of Kansas from the southern boundary line of the State, to and across the northern boundary line of the State near the 98 meridian, and the said applicant be and is hereby permitted to transact the business of a common carrier (Interstate) in the State of Kansas as hereinbefore designated.

By the Commission it is so ordered.

Homer Hoch, Jess W. Greenleaf, Ernest E. Blincoe, Commissioners.

Attest:

C. H. Benson, Secretary.

(Here follows 1 photolithograph, side folio 594)

4189

State Corporation Commission

STATE OF KANSAS

COMMISSIONERS

ANDREW F. SCHOEPPEL A. B. JONES
ALFRED WILLIAMS

To all to Whom these Presents shall Come, Greetings:

I, RICHARD B. McENTIRE, Secretary of the State Corporation Commission of the State of Kansas, do hereby certify that the following and hereto attached is a true copy of ORDER

In the matter of the application of the Cimarron Valley Pipe Line Company for a certificate of convenience and authority to transact the business of a common carrier in the state of Kansas, crossing the state of Kansas near the 93rd Meridian.	DOCKET NO. 14,624 ORDER NO. 21-10-11

the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the seal of the State Corporation Commission.

Done at the City of Topeka, this 15th day of October A.D. 1941

Secretary, State Corporation Commission.

4324

[fol. 595] BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Docket No. 15,628

Order No. 41-10-11

In the Matter of the Application of the CIMARRON VALLEY PIPE LINE COMPANY for a certificate of convenience and authority to transact the business of a common carrier in the State of Kansas, crossing the State of Kansas near the 98th Meridian.

ORDER

Now on this 11th day of October, 1941, the above entitled matter comes regularly on for consideration on the Commission's own motion and, after having taken judicial notice of certain public records, the Commission finds:

That it did, on the 23rd day of February, 1935, issue to the Cimarron Valley Pipe Line Company a certificate of convenience and authority which authorized said company to transact the business of an interstate common carrier of petroleum and its products (principally gasoline) by pipe line. As an incident thereto the said Cimarron Valley Pipe Line Company was authorized to contruct, maintain and operate the said pipe line together with such telephone and telegraph lines and other necessary and related equipment.

That a pipe line was constructed by the Cimarron Valley Pipe Line Company within and through a part of the state of Kansas which was, by a bill of sale dated June 10, 1935, sold and conveyed to the Champlin Refining Company. No approval was sought from or granted by the Commission with respect to such sale.

That, on July 2, 1936, the Secretary of State of the state of Kansas authorized the Cimarron Valley Pipe Line Company to withdraw from doing business within the state of Kansas as a foreign corporation and the company does not now have the right to do business or operate within this state.

That, by its withdrawal, the Cimarron Valley Pipe Line Company forfeited all of the rights and privileges which [fol. 596] were granted to it by virtue of the said certificate and, by reason thereof, such certificate should be stricken from the files and records of the Commission.

That the findings hereinabove made and the provisions of this order should not be construed to authorize any successor of the Cimarron Valley Pipe Line Company or the present owner of said pipe line to conduct the business of an interstate or intrastate common carrier or public utility within or through any part or all of the state of Kansas. Neither should this order be construed to constitute a declaration that the operation of the said line is not subject to regulation by the Commission under the provisions of the Public Utility Act or that such operations do not constitute such successor a public utility or common carrier within this State. Likewise, the act of striking the certificate granted to the Cimarron Valley Pipe Line Company from the files of the Commission shall not be deemed to constitute a holding that an interstate pipe line company can use the highways of the state of Kansas without first securing a certificate of convenience and authority from the Commission which authorizes and requires such company, to operate as an intrastate public utility or common carrier or that, having voluntarily elected to use such highways and to engage in business within this state, such pipe line company is not estopped to deny that it is such an intrastate public utility or common carrier. Nor is it deemed that this action constitutes an approval of the sale of the said pipe line or that such sale did not transfer to the successors of the Cimarron Valley Pipe Line Company all of the obligations and duties imposed by the laws of the state of Kansas upon the Cimarron Valley Pipe Line Company.

It Is, Therefore, By The Commission Ordered: That the certificate of convenience and authority heretofore granted to the Cimarron Valley Pipe Line Company on February 23, 1935, be and the same is hereby figuratively stricken from the files and records of the Commission.

By the Commission it is so ordered.

Richard B. McEntire, Secretary. (Seal.)

[fol. 597] EXHIBIT 26

In connection with the construction in 1935, of the pipe line from Enid, Oklahoma, to Superior, Nebraska, an "Application" in the form hereto attached was filed by the Cimarron Valley Pipe Line Company with the Board of

County Commissioners of each of the following named counties:

Garfield County, Oklahoma; Grant County, Oklahoma; Harper County, Kansas; Kingman County, Kansas; Reno County, Kansas; McPherson County, Kansas; Saline County, Kansas; Ottawa County, Kansas; Cloud County, Kansas; Republic County, Kansas; Nuckolls County, Nebraska.

[fol. 598] IN THE COUNTY OF ——, STATE OF ——

In the Matter of the Application of the CIMARRON VALLEY PIPE LINE COMPANY, a corporation, for permission to construct, operate and maintain a telephone line, and pipe line along, under, over, through, upon and across certain of the highways of —— County, ——, as shown by plat hereto attached

APPLICATION

To the Honorable Board of County Commissioners of —— County, State of ——:

Comes now the Cimarron Valley Pipe Line Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of —— and represents:

First. That the said Cimarron Valley Pipe Line Company is engaged in the business of transporting petroleum, gas, gasoline and petroleum products and now has in the process of construction a telephone line and pipe line.

Second. That said company and its assigns desire to obtain permission to construct its said telephone line and pipe line along, under, over, through, upon, and cross the following described highways in —— County, ——, to-wit:

according to attached plat.

[fol. 599] Third. That said telephone line and pipe line are essential to the conduct of the business of the Cimarron Valley Pipe Line Company and its assigns, and will be constructed, operated and maintained under the supervision of the County Highway Engineer of —— County,

——, and will be placed in such manner as not to interfere with or hinder the public in the use of said highway.

Wherefore, your petitioner prays that your Honorable Board make an order granting to the said Cimarron Valley Pipe Line Company and its assigns the privilege of constructing, operating and maintaining said telephone line and pipe line along, under, over, through and across said public highways, as hereinbefore described in this petition.

Respectfully submitted, Cimarron Valley Pipe Line Company, by —— ——, President.

Attest:

—— ——, Secretary.

[fol. 600] EXHIBIT 27

In connection with the construction in 1935, of the pipe line from Enid, Oklahoma, to Superior, Nebraska, orders authorizing the Cimarron Valley Pipe Line Company to construct the pipe and telephone lines within the respective counties, in the form hereto attached, were issued by each of the Boards of County Commissioners of the following named counties:

Garfield County, Oklahoma; Grant County, Oklahoma; Harper County, Kansas; Kingman County, Kansas; Reno County, Kansas; McPherson County, Kansas; Saline County, Kansas; Ottawa County, Kansas; Cloud County, Kansas; Republic County, Kansas, Nuckolls County, Nebraska.

[fol. 601] IN THE COUNTY OF ——, STATE OF ——

In the Matter of the Application of the CIMARRON VALLEY PIPE LINE COMPANY, a corporation, for permission to construct, operate and maintain a telephone line and pipe line along, under, over, through, upon and across certain of the highways in —— County, as shown by plat hereto attached.

ORDER

Now on this — day of ——, 19— at a regular meeting of the Board of County Commissioners, of —— County, ——, held by said Board according to law, comes the

Cimarron Valley Pipe Line Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of ——, with offices at Enid, Oklahoma, and presents to said Board its request in writing, setting forth that it is necessary for the purpose of carrying on its business of transporting petroleum, gas, gasoline and petroleum products, for the said corporation, to construct, operate, and maintain a telephone line and pipe line along, under, over, through, upon and across the highways in its petition described and as in the plat hereto attached, described and indicated as follows:

[fol. 602] That this Board of County Commissioners, being fully advised in the premises, and having carefully considered the same, find that it is necessary in the conduct of its business for the Cimarron Valley Pipe Line Company to construct, operate, and maintain the said telephone line and pipe line along, under, over, through, upon and across certain of the highways of —— County, ——, as indicated in said petition, as shown by the plat thereof thereto attached.

It is therefore ordered that said petitioner, Cimarron Valley Pipe Line Company be and it is hereby granted permission to construct, operate and maintain the said telephone line and pipe line along, under, over, through, upon and across the highways so described in its said petition and the plats hereto attached.

It is further ordered that said telephone line and pipe line shall be maintained at the expense of the petitioner, and in such manner as not to interfere with the due and proper use of said highway by the public or with the repairs thereof.

It is further ordered that in no event shall —— County, ——, be responsible for any injury occasioned by the building of said telephone line and pipe line along said highways, and it is distinctly understood that said —— County, ——, shall be subject to no liabilities therefor.

—— ——, Chairman of the Board of County Commissioners, —— County, ——

[fol. 603] EXHIBIT 28

In connection with the construction of the pipe line in 1935, from Enid, Oklahoma, to Superior, Nebraska, the State Highway Commission of Oklahoma executed a license to the Cimarron Valley Pipe Line Company, in the form hereto attached.

[fol. 604] License

This authority executed in triplicate this —— day of ——, —— by the State Highway Commission, acting for and on behalf of the State of Oklahoma, hereinafter called Commission, witnesseth:

That the Commission does by these presents grant to —— a license to erect, construct, and maintain a —— along, upon or across the hereinafter described state highways for the purpose of transmitting, selling and using ——.

Said highways being shown on attached sketch and described as follows,

This authority includes the right to cross all state highways and state roads intersecting any part of the route above described, and said authority also includes the right to maintain the necessary stubs and guy wires and to trim trees when and where necessary for proper clearance, but trees shall not be removed or trimmed without the written approval of the Commission, Said poles, posts and stubs are to be erected, or pipe lines installed, under the direction of the Commission and in the manner and locations as approved by him. For pole lines at all crossings, a clearance above the surface of not less than twenty (20) feet [fol. 605] above the surface of not less than twenty (20) feet shall at all times be maintained. That said poles, posts, and stubs, pipe lines and all fixtures, wires, etc., shall at all times be kept in good repair.

That this license is revocable at will and upon notice of revocation the licensee herein shall at its own expense immediately remove from said highway (or to such new location whereon as may be designated by the Commission) to the satisfaction of the Commission, all poles, posts, stubs, pipes, valves, fixtures and other property erected and placed upon or under the herein before described highways under the authority herein contained.

That the licensee assumes all liability for any damage to persons or property caused by the construction or maintenance of said poles, posts, stubs, pipes, valves, wires and other property placed on or under said highway; and agrees to reimburse the State for any and all monies expended by it in repairing any damage to said highway caused by the construction or maintenance of such transmission lines and pipes.

This license is granted subject to any and all claims made by adjacent property owners as compensation for addition burden on such adjacent and abutting property.

The State Highway Commission of Oklahoma, by

—— ——.

Disapproval —— ——.

Approval recommended, —— ——, Division Engineer.

[fol. 606] EXHIBIT 29

In connection with the construction in 1935 of the pipe line from Enid, Oklahoma to Superior, Nebraska, an "Application for Excavation" was addressed to the State Highway Commission Office at Salina, Kansas and also at Hutchinson, Kansas in the form hereto attached.

Both applications were approved which constituted the granting of the permits, and Nos. 2-82 and 5-124 were assigned by the State Highway Commission as permit numbers.

[fol. 607] Original to Applicant, Duplicate to Division Office, Triplicate to Topeka.

——, Kansas, ——, 19—, ——, County.

State Highway Commission of Kansas

Application for Excavation Permit

To the State Highway Commission: —— ——, ——, Kansas

GENTLEMEN:

Permission is hereby requested (Describe fully nature of work) ——. Said work being located on State Highway No. ——, —— and —— Tenths miles (Direction) —— from (Place, Town or Object) more specifically described

as follows: ——. The excavation is for the purpose of ——.

The applicant agrees that if granted a permit to perform the above described work that said work shall be under the supervision and direction of the State Highway Commission or its authorized representative. The applicant agrees to indemnify and hold harmless the State Highway Commission from any damages of any nature which may result to any person or property arising out of the performance or non-performance of the above described work. The applicant agrees that repair work or backfill will not be made unless an authorized representative of the State Highway Commission of Kansas is present.

The applicant understands that the location, construction and maintenance of any conduits or pipe lines through, in, under or over any state highway are under the supervision of the State Highway Commission at all times. The applicant further understands that in granting this permit [fol. 608] the Commission waives none of its rights or powers to direct the relocation, removal or proper maintenance in the future of any conduit or pipe laid within the right of way of the State Highway by virtue of this permit if granted.

A certified check accompanies this application in the amount of —— Dollars ($——), made payable to the State Highway Commission of Kansas to guarantee and insure to said Commission the proper performance of above described work and the restoration of said highway or the placing of said highway in the condition required by the State Highway Commission of Kansas or its authorized representative. The applicant agrees that in case of failure or refusal to perform said work in accordance with the specifications and directions of the State Highway Commission or its authorized representative, or within thirty days after the completion of said work to place said highway in a suitable condition as required by the Highway Commission or its authorized representative, the Commission may use the above sum so deposited or such part of same as may be necessary to properly restore said highway.

Special Regulations

A $10.00 deposit shall be required for each small excavation made outside of the pavement or surfacing, or for

boring under the pavement with an auger not to exceed four inches in diameter.

A $25.00 deposit is required for tunneling under the pavement or surfacing to a depth not to exceed seven feet, nor a width not to exceed two feet, or for tunneling under the entire width of an unsurfaced highway.

A $50.00 deposit is required for cutting not to exceed eighteen square feet of pavement and excavating to a depth not to exceed seven feet.

All deposits must be made in the form of a certified check payable to the State Highway Commission of Kansas.

Backfilling and repair must be inspected as the work is done by an authorized representative of the State Highway Commission of Kansas. The State Highway Commission will furnish inspection only upon forty-eight hours' notice.

Special arrangements must be made for more extensive work.

In case the pavement is cut, the backfill must be maintained thirty days by the company making the excavation before the pavement can be replaced.

The deposit, or any unexpended portion of it, which has been made with the State Highway Commission, will be returned after the highway has been satisfactorily restored to its original condition.

(Signed) —— ——, by —— ——, Title —— ——
Address —— ——, Kans. Tele. No. ——. Permit No. —.

Issued by —— ——.
Date issued —— ——, 19—.

[fol. 609] Specifications for Installation of Pipe Lines on State Highway Right of Ways

These specifications govern the installation of pipe lines or conduits for the purpose of conveying natural gas, oil, water, cables, etc., through and across state highway right of ways of Kansas in accordance with Section 16, Chapter 225, Session Laws of 1929.

When an individual, public service corporation or municipality, their contractors or employees, deem it necessary and expedient to install a pipe line or conduit across any

state highway right of way, or temporary state highway right of way, they shall comply with the following clauses:

1. An application for Permit must be filed with and approved by the State Highway Commission or its authorized agents before any part of the installation begins.

2. Forty-eight hours' notice must be given the State Highway Commission of Kansas at the Division Engineer's Office in which Division the installation takes place before starting any excavation or other work on the right of way.

3. Said installation shall be in accordance with attached plan showing cross-section of highway and with these specifications or any supplements thereto.

4. Traffic must be kept moving during installation. If it is impossible to keep traffic moving over highway during operations, a suitable detour must be arranged, said detour to be approved by a representative of the Highway Department before operations begin.

5. If the installation requires a tunnel or open cut under or across the highway a suitable crossing or detour shall be maintained and kept in good condition until the backfill has taken its final settlement and surfacing placed and opened for traffic. Said detour must be maintained by the contractor, company, corporation, municipality or individual making installations.

6. The company, corporation, or municipality, or its contractors or employees, shall assume all liabilities for accidents to the public in general caused by negligence on their part, or to any other cause directly or indirectly connected with their work of installing their pipe lines, conduits, etc., on the highway.

7. The State Highway Department reserves the right to revoke any permission given any company, corporation or municipality if, in the opinion of the State Highway Commission or its authorized representative, the terms of these specifications or any supplementary specifications are not being followed by the company, corporation or municipality or its contractors or employees.

192

CLERK'S COPY

749458

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 75 21

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED MAY 16, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 75

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

VOL. II

INDEX

	Original	Print
Record from D. C. U. S., Western District of Oklahoma—Continued		
Proceedings before Interstate Commerce Commission, Valuation Docket No. 1267—Continued		
Exhibits—Continued		
Exhibit 30—Cimarron Valley's application for excavation under highways in Nebraska	610	443
Exhibit 31—Applications to counties in Nebraska and South Dakota to construct pipe line	614	446
Exhibit 32—Form of order pursuant to foregoing applications	617	448
Exhibit 33—Nuckolls County, Nebraska, order, supplemental application, and supplemental order	620	450
Exhibit 34—Cuming County, Nebraska, application and order	627	454
Exhibit 35—Transaction in Union County, South Dakota	631	459
Exhibit 36—Application for excavation permit in Nebraska	634	462
Exhibit 37—Correspondence with South Dakota Highway Department	638	466
Exhibit 38—War Department permit to cross Missouri River	643	468
Exhibit 39—Lyon County, Iowa, permit	647	473
Exhibit 40—Sioux County, Iowa, permit	650	476
Exhibit 41—Application to Iowa State Commerce Commission	653	479
Exhibit 42—Order of Iowa State Commerce Commission, dated March 15, 1940	656	481

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 16, 1945.

	Original	Print
Record from D. C. U. S., Western District of Oklahoma—Continued		
Proceedings before Interstate Commerce Commission, Valuation Docket No. 1267—Continued		
Exhibits—Continued		
Exhibit 43—Letter of October 7, 1941, to Iowa State Commerce Commission	665	483
Exhibit 44—Order of Iowa State Commerce Commission, dated October 13, 1941	666	483
Exhibit 45—Valuation Order No. 26 revised effective December 31, 1934	676	486
Exhibit 46—Valuation Order No. 27, April 12, 1935	702	500
Exhibit 47—Leverton memo of December 3, 1941, transmitting copies of correspondence with Treasury Department	716	523
Exhibit 48—Leverton memo of December 3, 1941, transmitting copies of forms of application for permits to do business in states other than that of incorporation (omitted in printing)	000	
Exhibit 49—Balance sheet at December 31, 1940	720	525
Exhibit 50—Minutes of I. C. C. Division 2, dated March 17, 1941	721	526
Report of Interstate Commerce Commission, Dec. 14, 1942	722	526
Order reopening proceeding for reargument and reconsideration	730	537
Report of Interstate Commerce Commission on Reargument, June 12, 1944	731	537
Order for Compliance, June 12, 1944	740	546
Order Denying Rehearing, July 26, 1944	741	547
Order Extending Effective Date of Order for Compliance, September 2, 1944 (omitted in printing)	742	
Petition for Rehearing in District Court	744	549
Exhibit "A"—Photo copy of transcript in *Uncle Sam Oil Co.* case	765	568
Exhibit "B"—Photo copy of brief filed by *Uncle Sam Oil Co.*	825	629
Exhibit "C"—Photo copy of brief for the United States in *Pipe Line Cases*	889	693
Exhibit "D"—Photo copy of brief for the I. C. C. in *Pipe Line Cases*	1035	799
Exhibit "E"—Copy of District Court opinion in *I. C. C. v. Tank Car Oil Corp.*	1154	880
Exhibit "F"—Copy of brief of United States and I. C. C. in *Valvoline Case*	1167	889
Exhibit "G"—Copy of brief of Valvoline Co. in *Valvoline case*	1227	929
Clerk's certificate re petitioner's original exhibits "C," "D," "E," "F," "G," and X	1260A	956
Statement of points to be relied upon	1261	957
Designation of parts of record to be printed	1267	959
Appellees' amended designation of additional parts of record to be printed	1272	962
Order noting probable jurisdiction	1277	965

[fol. 610] EXHIBIT 30

In connection with the construction of the pipe line in 1935, from Enid, Oklahoma, to Superior, Nebraska, an application for Excavation Permit was filed by the Cimarron Valley Pipe Line Company, with the State Department of Roads and Irrigation of Nebraska, in the form hereto attached, which application was approved and permit was granted, in the manner indicated by the form.

[fol. 611] Original to Applicant. Duplicate to District Engineer. Triplicate to Lincoln.

STATE OF NEBRASKA

Department of Roads & Irrigation

Bureau of Roads & Bridges

Application for Excavation Permit

Date —— —, 19—.
County ——.

To the State Department of Roads and Irrigation, Lincoln, Nebraska.

GENTLEMEN:

Permission is hereby requested —— (Describe fully nature of work). Said work being located on State Highway No. —, —— and —— Tenths Miles —— (Direction) from —— (Place, town or object), more specifically described as follows: ——. The excavation is for the purpose of——.

The applicant agrees that if granted a permit to perform the above described work that said work shall be under the supervision and direction of the State Department of Roads and Irrigation or its authorized representative. The applicant agrees to indemnify and hold harmless the State Department of Roads and Irrigation from any damages of any nature which may result to any person or property arising out of the performance or non-performance of the above described work. The applicant agrees that repair work or backfill will not be made unless an authorized representative of the State Department of Roads and Irrigation is present.

The applicant understands that the location, construction and maintenance of any conduits or pipe lines through, in, or over any State Highway is under the supervision of the State Department of Roads and Irrigation at all times. The applicant further understands that granting this permit the State Department of Roads and Irrigation waives none of its rights or powers to direct the relocation, change in elevation, removal or proper maintenance in the future [fol. 612] of any conduit or pipe laid within the right-of-way of the State Highway by virtue of this permit if granted.

Our check in the amount of twenty-five dollars ($25.00) made payable to the Department of Roads and Irrigation accompanies this application; this check is to be retained by the said Department as a fee to cover the expense incurred in connection with issuing this permit and the supervision and inspection of the work.

Backfilling and repair must be inspected as the work is done by an authorized representative of the Department of Roads and Irrigation. The Department of Roads and Irrigation will furnish inspection only upon Forty-Eight Hours' Notice.

Special arrangements must be made for more extensive work.

The Company to whom this permit is granted agrees to make such installation in accordance with the "Specifications for Installation of Pipe Lines on State Highway Right-of-Ways," copy of which is attached hereto.

This Company to whom this permit is granted assumes full liability for damage to the roadbed and right-of-way and agrees to restore the road proper and right-of-way including any shrubs, trees or other improvements thereon to its original condition in all respects. It is agreed that in case the Company receiving this permit fails to restore the road to its original condition, the Department of Roads and Irrigation shall have the authority to have the necessary work done and, on submittal of an itemized claim, the Company to whom this permit is issued agrees to pay said claim promptly.

(Signed) —— ——, by —— ——, Title ——, Address ——, ——. Application approved and permit granted by ——, —— (Title). Date Issued —— —, 19—.

[fol. 613] SPECIFICATIONS FOR INSTALLATION OF PIPE LINES ON STATE HIGHWAY RIGHT-OF-WAYS

These specifications govern the installation of pipe lines or conduits for the purpose of conveying natural gas, oil, water, cables, etc., through and across State Highway right-of-ways.

When an individual, public service corporation or municipality, their contractors or employees, deem it necessary and expedient to install a pipe line or conduit across any State Highway right-of-way, or temporary State highway right-of-way, they shall comply with the following clauses:

1. An application for permit must be filed with and approved by the State Department of Roads and Irrigation or its authorized agents before any part of the installation begins.

2. Forty-eight hours' notice must be given the State Department of Roads and Irrigation at the District Engineer's office in which District the installation takes place before starting any excavation or other work on the right-of-way.

3. Said installation shall be in accordance with attached plan showing cross section of highway and with these specifications or any supplements thereto.

4. Traffic must be kept moving during installation. If it is impossible to keep traffic moving over highway during operations, a suitable detour must be arranged, said detour to be approved by a representative of the Highway Department before operations begin. Detouring of traffic will be permitted only in extreme cases.

5. The company, corporation or municipality, or its contractors or employees, shall assume all liabilities for accidents to the public in general caused by negligence on their part, or to any other cause directly or indirectly connected with their work of installing their pipelines, conduits, etc., on the highway.

6. The State Department of Roads and Irrigation reserves the right to revoke any permission given any company, corporation or municipality if, in the opinion of the State Department of Roads and Irrigation, or its authorized representative, the terms of these specifications or any supplementary specifications are not being followed by the

company, corporation or municipality or its contractors or employees.

7. The outer casing used shall meet the minimum requirements for culvert pipe as prescribed in the Nebraska standard specifications for highway construction and must be inspected and accepted by the Nebraska Department of Roads and Irrigation.

8. In case the Highway is improved with a higher type surface than gravel the installation must be made by jacking pipe through road or by some other approved method which will not disturb the surface of the highway. In the event this is impossible the Department of Roads and Irrigation may grant special permission to trench across the highway, by removing permanent type surface, in which case the backfill must be maintained thirty days by the company making the excavation before the permanent type surface can be replaced at the company's expense.

[fol. 614] EXHIBIT 31

In connection with the extension of the pipe line by Champlin Refining Company in 1939-1940 from Superior, Nebraska to Rock Rapids, Iowa, applications in the form hereto attached were filed with the County Boards of the following counties:

Nuckolls County, Nebraska
Clay County, Nebraska
Fillmore County, Nebraska
York County, Nebraska
Polk County, Nebraska
Butler County, Nebraska
Platte County, Nebraska
Colfax County, Nebraska
Stanton County, Nebraska
Wayne County, Nebraska
Dixon County, Nebraska

and to the Board of County Commissioners of Union County, South Dakota.

[fol. 615] In the County of ——, State of ——.

In the Matter of the application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways of —— County, ——.

Application

To the Honorable County Board of —— County, State of ——:

Comes now the Champlin Refining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of —— and represents:

First: That the said Champlin Refining Company is engaged in the business of producing, transporting, refining, and marketing petroleum, gas, gasoline and petroleum products and now has in the process of construction a pipe line within the State of ——.

Second: That said company desires to obtain permission to construct its said pipe line along, under, over, through, upon, and across the following described highways in —— County, ——, to-wit:

according to attached plat.

[fol. 616] Third: That said pipe line is essential to the conduct of the business of the Champlin Refining Company, and will be constructed, operated and maintained under the supervision of the County Board of —— County, ——, and will be placed in such manner as not to interfere with or hinder the public in the use of said highway.

Wherefore, your petitioner prays that your Honorable Board make an order granting to the said Champlin Refining Company, its successors and assigns the privilege of constructing, operating and maintaining said pipe line along, under, over, through and across said public highways, as hereinbefore described in this petition.

Respectfully Submitted, Champlin Refining Company, by —— ——, Vice-President.

Attest: —— ——, Secretary.

[fol. 617] EXHIBIT 32

In connection with the extension in 1939-1940 by Champlin Refining Company from Superior, Nebraska to Rock Rapids, Iowa, orders were issued in the form hereto attached by the County Boards of the following named counties:

Clay County, Nebraska

Fillmore County, Nebraska, with a provision in addition to those contained in the attached form as follows:

> "Said pipe line to be laid not less than five (5) feet below surface of land when crossing or passing along, under, or through any highway. Whenever Fillmore County should desire to go below a depth of five (5) feet in the construction or maintenance of any highway, Champlin Refining Company agrees to deepen pipe line to necessary depth upon written notice, without cost to county."

York County, Nebraska
Polk County, Nebraska
Butler County, Nebraska
Platte County, Nebraska
Colfax County, Nebraska

Stanton County, Nebraska, with a provision in addition to those contained in the attached form as follows:

> "• • • provided however, that the permit herein granted said Champlin Refining Company is conditioned upon its assumption of all responsibility and liability for any damages which may be sustained by Stanton County or any persons whomsoever, which may result from the construction, maintenance, or operation of such pipe line."

Wayne County, Nebraska, with a provision in addition to those contained in the attached form as follows:

> "• • • it being expressly understood by the said Champlin Refining Company, that they and they alone, shall be responsible for all accidents caused by their negligence in the construction of said pipe line hereinbefore set out and the said Company shall be responsible for any negligence in the maintenance of said line under said road as set out in the application.

The said Company guarantees the said Wayne County, harmless, from all damages occasioned by the above construction or the failure to properly maintain said line."

Dixon County, Nebraska
Union County, South Dakota

[fol. 618] In the County of —— State of ——.

In the matter of the application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways in —— County.

Order

Now on this —— day of ——, 19— at a regular meeting of the County Board, of —— County ——, held by said Board according to law, comes the Champlin Refining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of ——, and presents to said Board its request in writing, setting forth that it is necessary for the purpose of carrying on its business of producing, transporting, refining, and marketing petroleum, gas, gasoline and petroleum products, that the said corporation construct, operate and maintain a pipe line along, under, over, through and across the highways described in its petition and in the plat thereto attached, as follows:

[fol. 619] This Board being fully advised in the premises, and having carefully considered the same, finds that it is necessary in the conduct of its business that the Champlin Refining Company construct, operate, and maintain the said pipe line along, under, over, through, upon and across the aforesaid highways of —— County ——.

It is therefore ordered that said petitioner, Champlin Refining Company, be and it is hereby granted permission to construct, operate and maintain the said pipe line along, under, over, through, upon and across the highways so described in its said petition and the plat thereto attached.

It is further ordered that said pipe line shall be maintained at the expense of the petitioner and in such manner

as not to interfere with the due and proper use of said highways by the public or with the repairs thereof.

It is further ordered that in no event shall —— County, ——, be responsible for any injury occasioned by the building of said pipe line along said highways, it being distinctly understood that said —— County, ——, shall be subject to no liabilities therefor.

—— —— Chair. of the County Board of —— County ——.

—— ——, County Clerk.

[fol. 620] EXHIBIT 33

In connection with the extension of the pipe line by Champlin Refining Company in 1939-1940, from Superior, Nebraska to Rock Rapids, Iowa, the County Board of Commissioners of Nuckolls County, Nebraska, issued an order on the 8th of November, 1939, in the form hereto attached, and

On the same 8th of November, 1939, the Champlin Refining Company filed its supplementary application in the form hereto attached, and

The Board of Commissioners of Nuckolls County, on December 4, 1939, issued its supplementary order in the form hereto attached.

[fol. 621] In the County of Nuckolls, State of Nebraska

Before the County Board of Commissioners

In the matter of the application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line in Nuckolls County.

Order

Now on this —— day of November, 1939, at a regular meeting of the County Board of Nuckolls County, Nebraska, held by said Board according to law, comes the Champlin Refining Company, a Corporation duly organized and existing under and by virtue of the laws of New Mexico and authorized to do business in the State of Nebraska, and presents to said Board its request in writing setting forth that it is necessary for the purpose of carrying on its business of producing, transporting, refining and marketing petroleum, gas, gasoline and pe-

troleum products that said Corporation construct, operate and maintain a pipe line along, under, over, through and across the highways described in its petition and in the plat thereto attached as follows, to-wit: A six inch Gasoline Line beginning at a point near the Southeast Corner of the Northeast Quarter of Section 25, Township 1 North, Range 7 West, and extending in a Northeasterly direction to a point approximately one-fourth mile East of the Northwest Corner of Section 2, Township 4 North, Range 5 West.

Hearing is had on said application, and this Board having carefully considered the same and being fully advised in the premises, finds that it is necessary for said Champlin Refining Company in the conduct of its business of producing, manufacturing and selling gas, gasoline, oil and other petroleum products, and of transporting its said products for sale, to construct, operate and maintain a six inch pipe line between the points hereinabove designated; that in constructing such pipe line, it will be necessary to cross with said line of existing highways that will intersect the course of said proposed pipe line, and that permission [fol. 622] ought to be granted to said corporation to construct its said pipe line across all such highways; but the Board finds that no right should be granted to said company to construct its said pipe line within and along any highway except to the extent reasonably necessary to cross said highway from side to side in the regular course of such pipe line; and that such crossing shall be affected only at such depth as will not interfere with the maintenance, repair and reconstruction of such highways.

It is, Therefore, Ordered by the County Board: That permission be granted and hereby is granted to said Champlin Refining Company to construct its proposed pipe line across all highways that intersect the course of said pipe line within Nuckolls County, but not to construct such pipe line along and within said highway except to the extent necessary to affect a crossing of the highway in the regular course of the pipe line. It is further Ordered, that the construction of such pipe line across such highways shall be done only at a depth and in a manner approved by the Board of County Commissioners or such agent as they shall appoint to inspect such construction; that such pipe line shall be placed at such depth as not to interfere in any manner with the maintenance, repair, grading or reconstruction of any highway; that ditches constructed for the placing of

such pipe line across any and all such highways shall be carefully filled in and tamped so as to leave said highway in good condition; that while said ditches are open, warning signs and warning lights shall be maintained by said company for the protection of the public; that said company shall after the completion of said pipe lines keep the ditches dug across said highways for the purpose of constructing said pipe line, carefully filled so that neither said highway nor the traveling public shall be damaged by reason thereof; and that the said company shall at all times save and keep the County of Nuckolls harmless and free from all claims for any injuries or damage that may be caused at any time by the construction and maintenance of said pipe line across the highways of said County, and this permission is granted only upon the condition that the County [fol. 623] of Nuckolls shall in no event be responsible or liable for any injury occasioned by the building of said pipe line across said highways or by the maintenance and repairing or failure to repair said pipe lines and the excavations therefor by said Champlin Refining Company.

Passed this 8th day of November, 1939.

——, ——, ——, County Commissioners. Attested by: ——, County Clerk.

[fol. 624] In the County of Nuckolls, State of Nebraska

In the matter of the application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways of Nuckolls County, Nebraska

Supplemental Application

To the Honorable County Board of Nuckolls County, State of Nebraska:

Comes now the Champlin Refining Company and represents that heretofore on the 8th day of November, 1939, your Honorable Board entered its order allowing this applicant to construct its gasoline pipe line cross certain of the highways in Nuckolls County, Nebraska.

That it has become necessary for this applicant to change the route of its said line according to the plat hereto attached, and that said pipe line as re-routed is essential to

the conduct of the business of the Champlin Refining Company, and will be constructed, operated and maintained under the supervision of the County Board of Nuckolls County, Nebraska, and will be placed in such a manner as not to interfere with or hinder the public in the use of said highways.

Wherefore, your petitioner prays that your Honorable Board make an order granting to the said Champlin Refining Company, its successors and assigns, the privilege of constructing, operating and maintaining said pipe line along, under, over, through and across said public highways, as shown on the plat hereto attached.

Respectfully Submitted, Champlin Refining Company, By ——, Vice-President. Attest: ——, Assistant Secretary.

[fol. 625] Before the Honorable Board of Commissioners of Nuckolls County, Nebraska

In the matter of the application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways in Nuckolls County.

Supplemental Order

Now on this 4th day of December, 1939, at a regular meeting of the County Board of Commissioners of Nuckolls County, Nebraska, held by said Board according to law, comes the Champlin Refining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of Nebraska, and presents to said Board its request in writing, setting forth that it has become necessary to change the route of the gasoline pipe line described in our order of November 8, 1939, and that it is essential for the purpose of carrying on its business of producing, transporting, refining, and marketing petroleum, gas, gasoline and petroleum products, that the said corporation construct, operate and maintain a pipe line along, under, over, through and across the highways described in its supplemental application and in the plat thereto attached.

This Board, being fully advised in the premises, and hav-

ing carefully considered the same, finds that it is necessary in the conduct of its business, that said company construct, operate and maintain the said pipe line along and under certain highways of Nuckolls County, Nebraska, to-wit: one half mile along and under the highway between the Northwest Quarter of Section 28 and the Northeast Quarter of Section 29, both in township 4, Range 5 in said County; and one half mile along and under the highway between the Southwest Quarter of Section 3 and the Southeast Quarter of Section 4, both in Township 1, Range 6, in said County. [fol. 626] The Board further finds that said construction should be subject to all the restrictions, as to depth and methods of construction and maintenance, as are set forth in the order of this Board dated November 8, 1939.

It is, Therefore, Considered and Ordered: That the order of this Board, dated November 8, 1939, be rescinded to the extent only that the said Champlin Refining Company shall have the right to construct the pipe line along and under the one mile of the highways of said County hereinbefore described.

It is further ordered that the construction and maintenance of said pipe line shall be subject to all the restrictions set forth in the order of this Board dated November 8, 1939, and that said pipe line shall be maintained at the expense of the petitioner, and in such manner as not to interfere with the due and proper use of said highways by the public or with the repairs thereof.

It is further ordered that in no event shall Nuckolls County, Nebraska, be responsible for any injury occasioned by the building of said pipe line along said highways, it being distinctly understood that said Nuckolls County, Nebraska, shall be subject to no liabilities therefor.

——, ——, ——, Commissioners. Attest: County Clerk.

[fol. 627] EXHIBIT 34

In connection with the extension of the pipe line by Champlin Refining Company from Superior, Nebraska to Rock Rapids, Iowa in 1939-1940, the Champlin Refining Company filed its application with the County Board of Cuming County, Nebraska, and the said County Board on

November 7, 1939, issued its order in the forms hereto attached.

In addition to the application, the Champlin Refining Company also filed a Surety Bond in the sum of $10,000, (copy of which is not available) as provided for in the last paragraph of the order of the County Board of Cuming County, a copy of which is attached hereto.

[fol. 628] IN THE COUNTY OF CUMING, STATE OF NEBRASKA

In the Matter of the Application of the CHAMPLIN REFINING COMPANY, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways of Cuming County, Nebraska

APPLICATION

To the Honorable County Board of Cuming County, State of Nebraska:

Comes now the Champlin Refining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of Nebraska and represents:

First: That the said Champlin Refining Company is engaged in the business of producing, transporting, refining, and marketing petroleum, gas, gasoline and petroleum products and now has in the process of construction a pipe line within the State of Nebraska.

Second: That said company desires to obtain permission to construct its said pipe line along, under, over, through, upon, and across the following described highways in Cuming County, Nebraska, to-wit:

6" Gasoline Line

Beginning at a point near the Southwest Corner of the Northwest Quarter of Section 31, Township 22 North, Range 4 East and extending in a Northeasterly direction to the Northeast Corner of Section 35, Township 24 North, Range 4 East; thence continuing to a point one-fourth mile East of the Northwest Corner of Section 6, Township 24 North, Range 5 East.

according to the attached plat.

Third: In the event that said Board of County Supervisors of said County of Cuming, State of Nebraska, grants permission to this petitioner to lay, construct, maintain and operate said pipe lines in, across, through and under said public highways, then said Champlin Refining Company, of Enid, Oklahoma, agrees as follows:

(a) The manner of constructing said pipe line in said public highway shall be in accordance with speci- [fol. 629] fications or in a manner approved by the Board of County Supervisors of Cuming County, Nebraska. Said pipe lines shall be laid at least 6 feet below the surface and, or shall be constructed so as not to interfere with the future improvements of said highways.

(b) Said Company shall save and keep harmless said County of Cuming and said Board of County Supervisors of Cuming County, from any and all liability whatsoever for injury or damages to any person or persons whomsoever and, or to any property whatsoever and, or to said public highways arising from the laying, constructing, operating and maintaining of said pipe line or pipe lines in, across, through and under said public highways and shall reimburse said County for any and all damages done to said public highways by such construction, operation and maintenance of said pipe lines.

(c) If at any time subsequent to the construction of said pipe lines, improvements in said highways necessitate a change of location or the removal of said pipe lines, said Company shall at its own expense, upon thirty (30) days notice in writing from said Board of County Supervisors, alter or change the position of said pipe line. If said Champlin Refining Company shall neglect, fail or refuse to make such change after such notice from said Board, then said change shall be made by said County and said Company shall reimburse said County for the cost and expense of such change.

(d) Said County of Cuming and the Board of County Supervisors thereof, shall not be liable for in-

jury or damage to said pipe lines due to the use of said public roads or any change or improvement thereof or on account of the negligence of any or all County Employees or any person or persons whomsoever.

Fourth: That said pipe line is essential to the conduct of the business of the Champlin Refining Company, and will be constructed, operated and maintained under the supervision of the County Board of Cuming County, Nebraska, and will be placed in such a manner as not to interfere with or hinder the public in the use of said highway.

Wherefore, your petitioner prays that your Honorable Board make an order granting to the said Champlin Refining Company, its successors and assigns the privilege of constructing, operating and maintaining said pipe line along, under, over, through and across said public highways, as hereinbefore described in this petition.

Respectfully Submitted, Champlin Refining Company. By —— ——, Vice-President.

Attest: —— ——, Secretary.

[fol. 630] In the County of Cuming, State of Nebraska

In the Matter of the Application of the Champlin Refining Company, for permission to construct, operate and maintain a pipe line along, under, over, through, upon and across certain of the highways in Cuming County.

Order

Now on this 7th day of November, 1939 at a regular meeting of the County Board, of Cuming County Nebraska, held by said Board according to law, comes the Champlin Refining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of New Mexico, and authorized to do business in the State of Nebraska, and presents to said Board its request in writing, setting forth that it is necessary for the purpose of carrying on its business of producing, transporting, refining, and marketing petroleum, gas, gasoline and petroleum products, that the said corporation construct, operate, and maintain a pipe line along, under- over, through and across the

highways described in its petition and in the plat thereto attached, as follows:

6" Gasoline Line

Beginning at a point near the Southwest Corner of the Northwest Quarter of Section 31, Township 22 North, Range 4 East and extending in a Northeasterly direction to the Northeast Corner of Section 35, Township 24 North, Range 4 East; thence continuing to a point one-fourth mile East of the Northwest Corner of Section 6, Township 24 North, Range 5 East.

This Board being fully advised in the premises, and having carefully considered the same, finds that it is necessary in the conduct of its business that the Champlin Refining Company construct, operate, and maintain the said pipe line along, under, over, through, upon and across the aforesaid highways of Cuming County, Nebraska.

It is therefore ordered that said petitioner, Champlin Refining Company, be and it is hereby granted permission to construct, operate and maintain the said pipe line along, under, over, through, upon and across the highways so described in its said petition and the plat thereto attached.

It is further ordered that said pipe line shall be maintained at the expense of the petitioner, and in such manner as not to interfere with the due and proper use of said highways by the public or with the repairs thereof.

It is further ordered that Champlin Refining Company shall construct, lay, maintain, and operate said pipe lines in accordance with the conditions set forth in said application and in a manner approved by the Board of County Supervisors, and upon the further condition that said Company shall indemnify, save and hold harmless the County of Cuming and Board of County Supervisors of said County from any and all liability for damages arising out of the construction, operation and maintenance of said pipe lines and that said company shall reimburse said County for any and all damages to said highways caused by such construction, operation and/or maintenance of said pipe lines and upon the further condition that the Champlin Refining Company shall within (10) days hereafter, deposit with the County Clerk of Cuming County, a bond in the penal sum of Ten Thousand ($10,000.00) Dollars conditioned on

the faithful performance of the obligations imposed hereunder on said Company, and said bond shall remain in force for the term of ten years after date hereof.

——— ———, Chair. of the County Board of Cuming County, Nebraska.

——— ———, County Clerk.

[fol. 631] EXHIBIT 35

In connection with the extension of the pipe line in 1939-1940 by Champlin Refining Company, from Superior, Nebraska to Rock Rapids, Iowa, the Board of County Commissioners of Union County, South Dakota executed a Pipe Line Right-of-Way dated November 7, 1939, and a second Pipe Line Right-of-Way dated November 8, 1939, in the forms hereto attached.

[fol. 632] Pipeline Right-of-Way

In consideration of the sum of One and no/100 Dollars, receipt of which is hereby acknowledged and the further consideration of twenty-five cents per lineal rod of the route selected by the Grantee, to be paid Grantor or deposited or tendered to his credit in the Union County Bank of Elk Point, South Dakota, when this grant shall be used or occupied, were for ourselves, heirs, successors and assigns hereby grant unto Champlin Refining Company, a New Mexico corporation, the right to lay, maintain, operate, repair, replace, and remove a pipeline for the transportation of water, gas, gasoline, petroleum or its products over, through and across the following described lands in Union County of South Dakota, to-wit:

The North half (N½) of the Southwest Quarter (SW-1/4) of Section five (5), Township 90 North, Range 49 West, and A strip of land one rod wide and eighty rods long being the entire south side of the Northeast Quarter of the Northeast Quarter of Section 5, Township 91 North, Range 49 West, and Across and along portions of the main north and south highway lying between the West Half and the East Half of the Southeast Quarter of Section 5, Township 91 North, Range 49 West.

Together with the right of ingress and egress to and from the same, such right-of-way to be along such route as may be selected by the Grantee, said Grantor to fully use said premises except for the purposes hereinbefore granted. Grantee may at any time lay additional lines of pipe on said premises, upon payment of like consideration, subject to same conditions; Grantee to pay any damage to cultivated crops which may arise from laying or for entering premises for purpose of repairing lines. The pipeline shall be buried in such a manner that there will be thirty inches of coverage between the top of the pipe and the surface of the ground.

It is further understood that the Champlin Refining Company will install said pipeline in such a manner so as not to interfere with the highway, herein above described, nor interfere with the drainage of the ditch parallel and adjacent thereto; that said pipeline will be laid in the ditch, on the east side, of the highway herein above described.

To Have And To Hold, said easement unto Champlin Refining Company, its successors and assigns forever.

Witness our hands this seventh day of November, 1939.

Board of County Commissioners of Union County, South Dakota. By ——, Chairman. ——, ——.

Champlin Refining Company. By ——, Agent. Draft No. 3294.

State of South Dakota, County of Union ss:

On this seventh day of November in the year 1939, before me personally appeared —— known to me to be the same persons whose names are attached hereto and who executed the within instrument, and acknowledged to me that they executedl the same.

——, Notary Public. My Commission Expires: ——, 19——.

[fol. 633] Pipeline Right-of-Way

In consideration of the sum of One and no/100 Dollars, receipt of which is hereby acknowledged and the further consideration of twenty-five cents per lineal rod of the route selected by the Grantee, to be paid Grantor or deposited or tendered to his credit in the Union County Bank of Elk Point, South Dakota, when this grant shall be used

or occupied, we for ourselves, heirs, successors and assigns hereby grant unto Champlin Refining Company, a New Mexico corporation, the right to lay, maintain, operate, repair, replace, and remove a pipeline for the transportation of water, gas, gasoline, petroleum or its products over, through and across the following described lands in Union County, South Dakota, to-wit:

Across and along portions of the main north and south highway which lies between the East Half and the West Half of the Southeast Quarter of Section 29, Township 92 North, Range 49 West and that portion of said highway which lies between the East Half and the West Half of the Northeast Quarter of Section 32, Township 92 North, Range 49 West.

Together with the right of ingress and egress to and from the same, such right-of-way to be along such route as may be selected by the grantee, said Grantor to fully use said premises except for the purposes hereinbefore granted. Grantee may at any time lay additional lines of pipe on said premises, upon payment of like consideration, subject to same conditions; Grantee to pay any damage to crops which may arise from laying or entering premises for purpose of repairing lines. The pipeline shall be buried in such a manner that there will be thirty inches of coverage between the top of the pipe and the surface of the ground.

It is further understood that the Champlin Refining Company will install said pipeline in such a manner so as not to interfere with the highway, herein above described; nor interfere with the drainage of the witch parallel and adjacent thereto; that said pipeline will be laid in the ditch, on the east side of the highway herein-above described.

To Have and To Hold, said easement unto Champlin Refining Company, its successors and assigns forever.

Witness our hands this eighth day of November, 1939.

Board of County Commissioners of Union County, South Dakota. By ——, Chairman. ——, ——.

Champlin Refining Company. By ——, Agent. Draft No. 3295.

State of South Dakota, County of Union ss:

On this eighth day of November in the year 1939, before me personally appeared —— known to me to be the same persons whose names are attached hereto and who executed the within instrument, and acknowledged to me that they executed the same.

——, Notary Public. My Commission Expires: ——, 19——.

[fol. 634] EXHIBIT 36

In connection with the extension of the pipe line by Champlin Refining Company from Superior, Nebraska, to Rock Rapids, Iowa, an Application for Excavation Permit was filed with the Department of Roads and Irrigation, Bureau of Roads and Bridges, of the State of Nebraska, on October 7, 1939, which application was approved and permit granted (no formal document delivered) on October 7, 1939, in the form attached.

[fol. 635] Original to Applicant.
Duplicate to District Engineer.
Triplicate to Lincoln.

69-S

STATE OF NEBRASKA

Department of Roads and Irrigation

Bureau of Roads and Bridges

Application for Excavation Permit

Date ——, 19—,
County ——.

To the State Department of Roads and Irrigation, Lincoln, Nebraska

GENTLEMEN:

Permission is hereby requested —— (Describe fully nature of work). Said work being located on State Highway No. ——, and —— tenths miles —— (Direction) from —— (Place, town or object), more specifically described as follows: ——. The excavation is for the purpose of ——.

The applicant agrees that if granted a permit to perform the above described work that said work shall be under the supervision and direction of the State Department of Roads and Irrigation or its authorized representative. The applicant agrees to indemnify and hold harmless the State Department of Roads and Irrigation from any damages of any nature which may result to any person or property arising out of the performance or non-performance of the above described work. The applicant agrees that repair work or backfill will not be made unless an authorized representative of the State Department of Roads and Irrigation is present.

The applicant understands that the location, construction and maintenance of any conduits or pipe lines through, in, or over any State Highway is under the supervision of the State Department of Roads and Irrigation at all times. The applicant further understands that granting this permit the State Department of Roads and Irrigation waives none of its rights or powers to direct the relocation, change in elevation, removal or proper maintenance in the future of any conduit or pipe laid.

[fol. 636] Our check in the amount of five hundred and fifty dollars ($550.00) made payable to the Department of Roads and Irrigation accompanies this application; this check is to be retained by the said Department as a fee to cover the expense incurred in connection with issuing this permit and the supervision and inspection of the work.

Whenever it becomes necessary for the applicant to remove permanent type surface in order to make the installation, a certified check, made payable to the Department of Roads and Irrigation in an amount to be determined before the application is approved, must be furnished in addition to the $25.00 fee. The certified check to be retained as a guarantee to the Department that the permanent type surface will be replaced by the applicant in a satisfactory manner. After the replacement has been made by the applicant, the certified check will be returned. In the event replacement is not made in a satisfactory manner, the Department will proceed to have proper repairs made, retaining the amount to be used for making the repairs from the certified check.

Backfilling and repair must be inspected as the work is done by an authorized representative of the Department of

Roads and Irrigation. The Department of Roads and Irrigation will furnish inspection only upon FORTY-EIGHT HOURS' NOTICE.

Special arrangements must be made for more extensive work.

The Company to whom this permit is granted agrees to make such installation in accordance with the "Specifications for Installation of Pipe Lines on State Highway Right-of-Ways," copy of which is attached hereto.

The Company to whom this permit is granted assumes full liability for damage to the roadbed and right-of-way and agrees to restore the road proper and right-of-way including any shrubs, trees or other improvements thereon to its original condition in all respects. It is agreed that in case the Company receiving this permit fails to restore the road to its original condition, the Department of Roads and Irrigation shall have the authority to have the necessary work done and, on submittal of an itemized claim, the Company to whom this permit issued agrees to pay said claim promptly.

(Signed) ——. By ——. —— (Title). Application approved and permit granted by ——. ——(Title). Date issued ——, 19—.

[fol. 637] Specifications for Installation of Pipe Lines on State Highway Right-of-Ways

These specifications govern the installation of pipe lines or conduits for the purpose of conveying natural gas, oil, water, cables, etc., through and across state highway right-of-ways.

When an individual, public service corporation or municipality, their contractors or employees, deem it necessary and expedient to install a pipe line or conduit across any state highway right-of-way, or temporary state highway right-of-way, they shall comply with the following clauses:

1. An application for PERMIT must be filed with and approved by the State Department of Roads and Irrigation or its authorized agents before any part of the installation begins.

2. Forty-eight hours' notice must be given the State Department of Roads and Irrigation at the District Engineer's

office in which District the installation takes place before starting any excavation or other work on the right-of-way.

3. Said installation shall be in accordance with attached plan showing cross section of highway and with these specifications or any supplements thereto.

4. Traffic must be kept moving during installation. If it is impossible to keep traffic moving over highway during operations, a suitable detour must be arranged, said detour to be approved by a representative of the Highway Department before operations begin. Detouring of traffic will be permitted only in extreme cases.

5. The company, corporation or municipality, or its contractors or employees, shall assume all liabilities for accidents to the public in general caused by negligence on their part, or to any other cause directly or indirectly connected with their work of installing their pipe lines, conduits, etc., on the highway.

6. The State Department of Roads and Irrigation reserves the right to revoke any permission given any company, corporation or municipality if, in the opinion of the State Department of Roads and Irrigation, or its authorized representative, the terms of these specifications or any supplementary specifications are not being followed by the company, corporation or municipality or its contractors or employees.

7. The outer casing used shall meet the minimum requirements for culvert pipe as prescribed in the Nebraska standard specifications for highway construction and must be inspected and accepted by the Nebraska Department of Roads and Irrigation.

8. In case the Highway is improved with a higher type surface than gravel, the installation must be made by jacking pipe through road or by some other approved method which will not disturb the surface of the highway. In the event this is impossible the Department of Roads and Irrigation may grant special permission to trench across the highway, by removing permanent type surface, in which case the backfill must be maintained thirty days by the company making the excavation before the permanent type surface can be replaced at the company's expense. The applicant may in lieu of maintaining the backfill for thirty

days make such backfill by compacting with mechanical tamper, in which event permanent type surface may be replaced immediately.

[fol. 638] EXHIBIT 37

In connection with the extension of the pipe line by Champlin Refining Company in 1939-1940 from Superior, Nebraska to Rock Rapids, Iowa, the Champlin Refining Company addressed a letter to the State Highway Commission of Pierre, South Dakota, dated October 10, 1939; a reply to which was dated October 23, 1939, and the Champlin Refining Company addressed a second letter on November 6, 1939, the reply to which was dated November 8, 1939.

Copies of the four letters are attached hereto.

[fol. 639] October 10, 1939

State Highway Commission, Pierre, South Dakota.

GENTLEMEN:

Our company is contemplating the construction of a gasoline pipe line across Union County, South Dakota, which will apparently intersect State Highway No. 50, and perhaps one or two other state roads.

Will you kindly send us your specifications for laying the line under this highway, together with the outline of any procedure necessary to obtain the approval of your department, and such forms as may be required for this purpose.

If you have an official highway map of the state, we would like to have a copy mailed to us.

Thanking you in advance for your courtesy, we are.

Very truly yours, Champlin Refining Company, By ——. EGW:f

[fol. 640] South Dakota State Highway Commission

Pierre

October 23, 1939

Champlin Refining Company, Enid, Oklahoma.

Attention: E. G. Wilmoth

DEAR MR. WILMOTH:

We are in receipt of your letter of October 10 with respect to the matter of securing permission to cross certain

highways in South Dakota with the pipe line which you contemplate building in the southeastern part of South Dakota.

I wish to advise that the method of procedure in handling such a request is that after you have determined just what highways you will cross and at what point, if you will submit this information to us in a request, you will be granted this permission subject to the construction being handled in accordance with the requirement of the State Highway Commission.

These requirements are such that will affect:

The condition of the crossing is not damaged.

The surface of the highway is not impaired by tunneling beneath the surface.

We do not have any particular specification that covers this type of crossing.

We are mailing you herewith an official copy of the South Dakota Highway Map so you may be able to locate the various places on the map for the purpose of giving us this information.

Yours very truly, State Highway Commission. By: E. W. Meeker, State Highway Engineer. EWM: J Enc.

[fol. 641] November 6, 1939

State Highway Commission, Pierre, South Dakota.

GENTLEMEN:

This will acknowledge receipt of your letter of October 23, 1939, and we wish to advise that our pipe line will cross U. S. Highway No. 77 at a point 1236 feet Northwest of the intersection of the center line of Highway 77 with the East line of Section 29, Township 91 North, Range 49 West, Union County, South Dakota.

We are sending herewith a plat showing this intersection.

We agree to construct this highway crossing in accordance with your requirements as shown in your letter of October 23, 1939, and under the supervision of your engineer.

Will you kindly send us your permission, and greatly oblige.

The construction crew will be at this location in a few days and we would appreciate the courtesy greatly if we might have the permit at your earliest convenience.

Very truly yours, Champlin Refining Company. By ——. EGW:f Enc.

[fol. 642] South Dakota State Highway Commission

Pierre

November 8, 1939

Champlin Refining Company, E. G. Wilmoth, Enid, Oklahoma.

GENTLEMEN:

This will acknowledge receipt of your letter of November 6 submitting information which we asked in connection with your request for permission to cross U. S. Highway [illegible] in Union County with your pipe line.

This letter will grant you this permission in accordance with the requirements as were specified in my letter of October 23. Same being that this crossing shall be done by tunnelling in accordance with the requirements of the Engineering Department which will inspect this work.

This information is being passed to Mr. H. M. Sparks, District Engineer, at Mitchell, South Dakota, and you will please advise Mr. Sparks when you expect to start work so he may have an Engineer on the ground to give you the instructions in accordance with our requirements.

Yours very truly, State Highway Commission. By E. W. Meeker, State Highway Engineer. EWM:J

[fol. 643] EXHIBIT 38

In connection with the extension of the pipe line in 1939-1940 by Champlin Refining Company from Superior, Nebraska, to Rock Rapids, Iowa, Champlin Refining Company addressed a letter to, and received a permit from the War Department in the forms attached.

[fol. 644] October 6, 1939

Col. W. M. Hoge, District Engineer, War Department, 1709 Jackson Street, Omaha, Nebraska.

Dear Sir:

We request a permit for the construction of a 6-inch I. D. pipe line, with a telephone line attached, for the transportation of petroleum, gas, gasoline and other petroleum products under the Missouri River between Sioux City, Iowa and Yankton, South Dakota, at approximately 838.6 above the mouth of the Missouri River (1890 mileage).

This work is not within the corporate limits of a municipality.

Both the pipe line and telephone line will be constructed temporarily according to the attached plat. If at any time this pipe line and telephone line become an obstruction to navigation, we agree to re-lay these lines according to your requirements.

It is understood that if a navigation project is adopted above Sioux City, it will be necessary for us either to remove these lines entirely or to place them at least 20 feet below standard low water.

Very truly yours, Champlin Refining Company. By —— EGW:f

[fol. 645] War Department

Note.—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining State Assent to the work authorized. It Merely Expresses the Assent of the Federal Government So Far As Concerns the Public Rights of Navigation. (See Cummings v. Chicago, 188 U. S., 410.) 3-8360

Permit

United States Engineer Office, Omaha, Nebraska

November 2, 1939.

Champlin Refining Company, Enid, Oklahoma.

GENTLEMEN:

Referring to written request dated October 6, 1939, signed, "Champlin Refining Company, By E. G. Wilmoth," I have to inform you that, upon the recommendation of the Chief of Engineers, and under the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of War, to construct and maintain a submerged pipe-line crossing, consisting of one 6-inch diameter steel pipe line for the transportation of petroleum, gasoline, natural gas, or other petroleum products, and one submarine telephone cable attached to the pipe line; which crossing shall be marked by signs as specified by the District Engineer, across the Missouri River, at mile 838.6 above the mouth (1890 mileage), and approximately two miles north and one-half mile east of Ponca, Nebraska, in accordance with the plans shown in red on the drawing attached hereto, marked: "Application by Champlin Refining Co., Submarine Crossing, Missouri River at Mile 838.6 near Ponca, Nebr., October 6, 1939."

Subject to the following conditions:

[fol. 646] (a) That the work shall be subject to the supervision and approval of the District Engineer, Engineer Department at Large, in charge of the locality, who may temporarily suspend the work at any time, if in his judgment, the interests of navigation so require.

(b) That any material dredged in the prosecution of the work herein authorized shall be removed evenly, and no large refuse piles, ridges across the bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is

laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore above highwater mark, shall be deposited or dumped at the locality shown on the drawing hereto attached, and, if so prescribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material into the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters, or in Long Island Sound, a permit therefor must be previously obtained from the Supervisor of New York Harbor, Army Building, New York City.

(c) That there shall be no unreasonable interference with navigation by the work herein authorized.

(d) That if inspections or any other operations by the United States are necessary in the interests of navigation, all expenses connected therewith shall be borne by the permittee.

(e) That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure.

(f) That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Secretary of War, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required, upon due notice from the Secretary of War, to remove or alter the structural work or obstructions caused thereby without expense to the United States, so as to render navigation reasonably free, easy, and unobstructed; and if, upon the expiration or revocation of this permit, the structure fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners shall, without expense to the United States, and to such extent and in such time and manner as the Secretary of War may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable capacity of the watercourse. No claim shall be made

against the United States on account of any such removal or alteration.

(g) That the United States shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

(h) That if the display of lights and signals on any work hereby authorized is not otherwise provided by law, such lights and signals as may be prescribed by the U. S. Coast Guard shall be installed and maintained by and at the expense of the owner.

(i) That the permittee shall notify the said district engineer at what time the work will be commenced, and as far in advance of the time of commencement as the said district engineer may specify, and shall also notify him promptly, in writing, of the commencement of work, suspension of work, if for a period of more than one week, resumption of work, and its completion.

(j) That if the structure or work herein authorized is not completed on or before thirty-first (31st) day of December, 1942, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

By authority of the Secretary of War:

W. M. Hoge, Lt. Col., Corps of Engineers, District Engineer.

War Department, O. C. of E. Form No. 96. Revised March 16, 1936.

9-14-39—3M—[illegible]—67973
Form 502

(E Cook
Ec. 1, Rapids)

Perz No. 413
Lyon County

IOWA STATE HIGHWAY COMMISSION

Application for Permit to Construct Pipe Line on State Highway Right-of-Way

Cook your copies on in the mail
Enid Dunn

Application of Champlin Refining Company
(corporation or partnership) incorporated under the laws of the
State of New Mexico with its principal place of business in
Enid, Oklahoma
(name of city and state)

November 27 1939

Iowa State Highway Commission,
Ames, Iowa.

Gentlemen:

Permission is hereby requested to construct a 6" pipe line for the transportation
(describe fully nature of work)
of gasoline and oil across primary roads not less than four feet below the bottom of road ditches. At all road crossings the 6" oil line will be encased in at least an 8" wrought iron casing which will be placed under the road after boring a 10" hole through the road grade. A minimum of 40 feet of casing will be used at each crossing.

(Plat showing location, size and approximate minimum depth of pipe line must be attached to application.)

Said work being located on Primary Road No. 27, Lyon County,
3 miles east (direction) from Alvord (place, town or object) more
specifically described as follows:

On North side of Sec. 2-98-46 - Road No. 27

The applicant agrees that if granted a permit to perform the above described work the following stipulations shall govern:

1. That all trenches constructed longitudinally along the road shall be placed not closer than ..... feet from the edge of the pavement where pavement has been constructed or not closer than ..... feet from the centerline of the highway on roads where pavement has not been constructed.

2. That if at any time subsequent to the placing of pipe line construction operations in the improvement of said highway include changes of alignment or contemplate making cuts which will expose or disturb said pipe line, or fills which will cover up pipe line, the applicant shall at its own expense and without cost to the state, upon order of the Commission, do such reconstruction work as may be necessary to conform to the new grades or alignment on the highway. Upon failure of applicant to comply with any such order promptly after receipt of same the State Highway Commission may cause the same to be done and applicant agrees to pay the cost thereof upon receipt of statement.

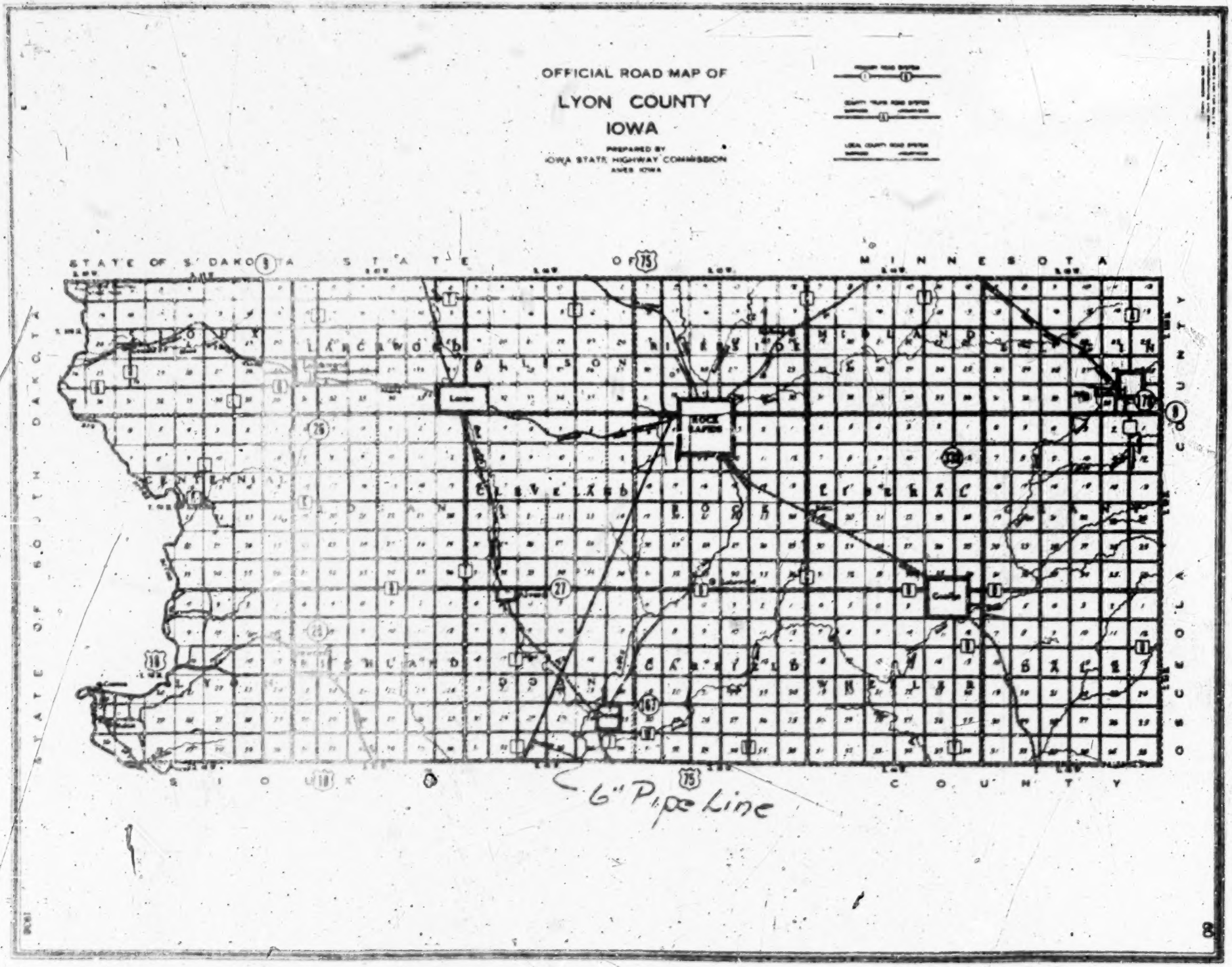
In the event any maintenance or construction work of the highway is likely to expose or interfere with the pipe line of the applicant the Commission will endeavor to give the applicant sufficient notice so that it may properly rearrange and protect its plant and will instruct contractors who are doing such highway work as to the location of the applicant's plant so that they may take reasonable precaution with respect to work interfering

OFFICIAL ROAD MAP OF

LYON COUNTY

IOWA

PREPARED BY
IOWA STATE HIGHWAY COMMISSION
AMES IOWA



with said plant. The state and State Highway Commission assume no responsibility for failure to give above notice.

3. That the state and the State Highway Commission assume no responsibility for damages to the applicant's property occasioned by any construction or maintenance operations on said highway subsequent to the building of the said pipe line.

4. That during the construction of said pipe line the applicant shall take all reasonable precaution to protect and safeguard the lives and property of the traveling public and adjacent property owners and shall save the state and the State Highway Commission harmless of any damage or losses that may be sustained by the traveling public or adjacent property owners on account of such construction operations.

5. That operations in the construction and maintenance of said pipe line shall be carried on in such a way as to not interfere with, or interrupt traffic on said highway.

6. That the applicant shall hold the state and the State Highway Commission harmless from any damage that may result to said highway because of the construction or maintenance of said pipe line and shall reimburse the state or the State Highway Commission for any expenditure that the state or the State Highway Commission may have to make on said highway on account of said applicant's pipe line having been constructed thereon.

7. That the applicant agrees to give the State Highway Commission forty-eight hours' notice of its intention to start construction on the highway right-of-way. Said notice shall be made in writing to the person whose name is shown below.

8. That the applicant agrees to construct pipe line crossings as follows: All pipe lines more than two (2) inches inside diameter which extend through the roadway shall be placed in casings of sufficient strength to properly carry the highway load so that the pipe may be removed from the casing for repair without disturbing the subgrade. On paved roads casings shall be placed through the subgrade by jacking or they shall be placed in a hole which has beeen bored through the subgrade slightly larger than the casing. Water pipes not encased shall be of copper or lead construction. If, in the opinion of the Highway Commission engineer in charge, on account of soil conditions jacking or boring is not feasible a tunnel may be driven through and the casing placed therein. In the case of roads which are not paved open trench construction may be used. All back-filling of tunnels and open trenches through the subgrade shall be carefully puddled or tamped in layers not to exceed six inches in depth. Back-filling of longitudinal trenches in the right-of-way shall be properly tamped to obviate settlement. All work shall be done in a thorough manner and left in a neat condition satisfactory to the Highway Commission engineer in charge.

9. That this permit is subject to any laws now in effect or any laws which may be hereafter enacted.

10. That this permit is subject to all the rules and regulations of the State Highway Commission and to revocation by the State Highway Commission at any time, when in the judgment of the Commission it is necessary in the improvement or maintenance of the highway or for other reasonable cause.

Recommended for approval:

Date November 27, 1939

District Engineer

Permit Granted NOV '39, 19

Signed Champlin Refining Company
Name of Company

By E. C. Duncan

Right-of-Way & Claim Agent
Title

Address Enid, Oklahoma

IOWA STATE HIGHWAY COMMISSION

By Randall Wilson
Chairman

Notice of construction to be sent to E. W. Dunn District Engineer,

Court House, Sioux City, Iowa
(address)

This permit for underground construction on right-of-way of primary road extension in ....., Iowa, shall not be effective unless and until approved by the Council and signed by the Clerk of ....., Iowa.

This is to certify hat this tentative permit ..... County, Permit No. ....., issued by the Iowa State Highway Commission, was approved by the Council of ....., Iowa, ..., 19 ....

Signed .....
City Clerk

(This application must be filed in quadruplicate with the State Highway Commission at Ames, Iowa, for each individual pipe line crossing or installation on primary highway right-of-way.)

649

425

Form 562

Permit No. 412

Sioux County

IOWA STATE HIGHWAY COMMISSION

Application for Permit to Construct Pipe Line on State Highway Right-of-Way

Application of Champlin Refining Company

(corporation or partnership) incorporated under the laws of the

State of New Mexico with its principal place of business in

Enid, Oklahoma
(name of city and state)

November 27 1939

Iowa State Highway Commission,
Ames, Iowa.

Gentlemen:

Permission is hereby requested to construct a 6" pipe line for the transportation
(describe fully nature of work)
of gasoline and oil across primary roads not less than four feet below the bottom of road ditches. At all road crossings the 6" oil line will be encased in at least an 8" wrought iron casing which will be placed under the road after boring a 10" hole through the road grade. A minimum of 40 feet of casing will be used at each crossing.

(Plat showing location, size and approximate minimum depth of pipe line must be attached to application.)

Said work being located on Primary Road No. 12, 10 & 18 Sioux County,

miles near (direction) Hawarden and Rock Valley (place, town or object) more

specifically described as follows:

specifically described as follows:

On west side of Sec. 14-9N-4E - Road No. 12

At the NE Cor. Sec. 1-9N-4W - Road No. 10

On N. side Sec. 25-9N-4W - Road No. 18

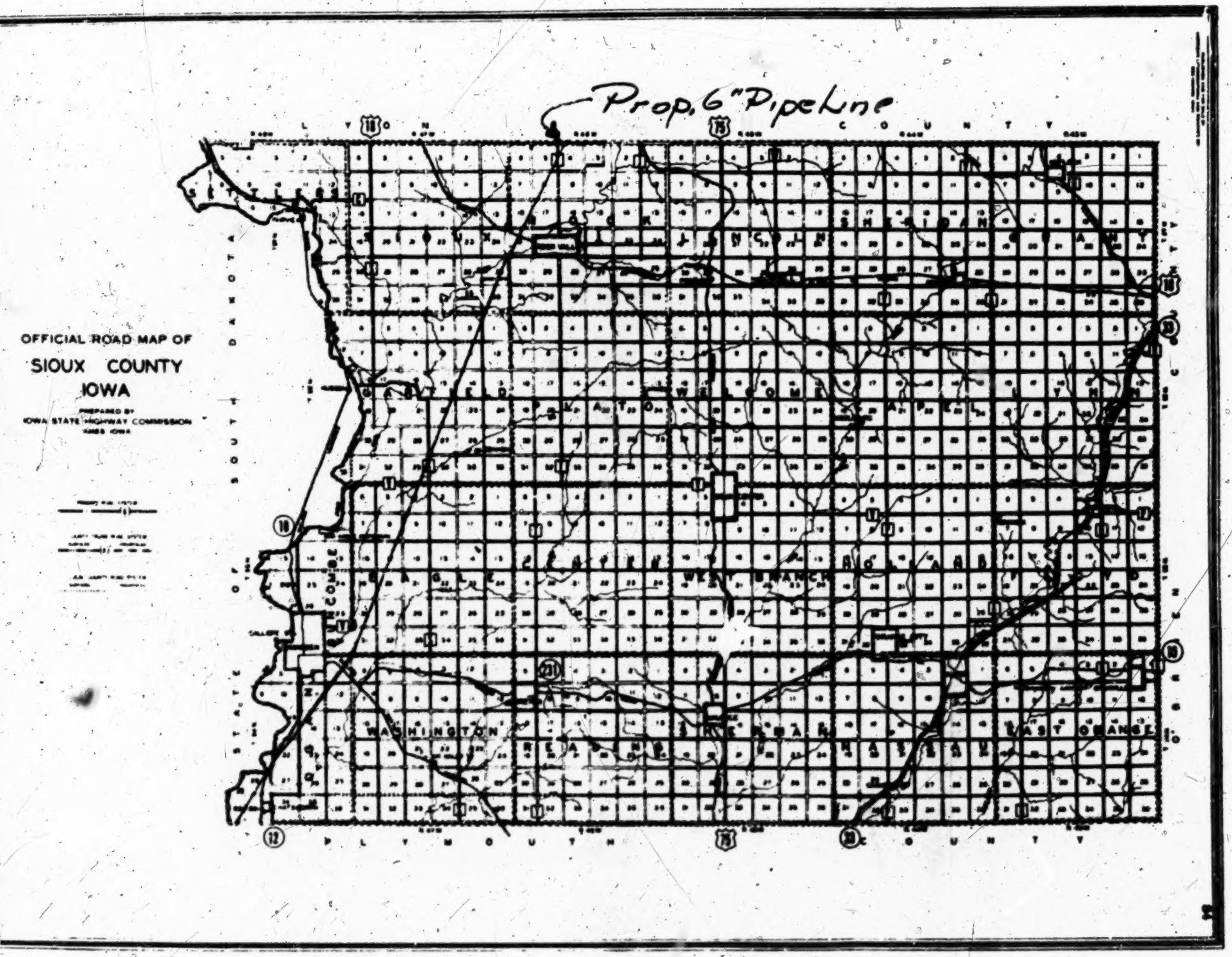
The applicant agrees that if granted a permit to perform the above described work the following stipulations shall govern:

1. That all trenches constructed longitudinally along the road shall be placed not closer than ---- feet from the edge of the pavement where pavement has been constructed or not closer than ---- feet from the centerline of the highway on roads where pavement has not been constructed.

2. That if at any time subsequent to the placing of pipe line construction operations in the improvement of said highway include changes of alignment or contemplate making cuts which will expose or disturb said pipe line, or fills which will cover up pipe line, the applicant shall at its own expense and without cost to the state, upon order of the Commission, do such reconstruction work as may be necessary to conform to the new grades or alignment on the highway. Upon failure of applicant to comply with any such order promptly after receipt of same the State Highway Commission may cause the same to be done and applicant agrees to pay the cost thereof upon receipt of statement.

In the event any maintenance or construction work of the highway is likely to expose or interfere with the pipe line of the applicant the Commission will endeavor to give the applicant sufficient notice so that it may properly rearrange and protect its plant and will instruct contractors who are doing such highway work as to the location of the applicant's plant so that they may take reasonable precaution with respect to work interfering

924


Prop. 6" Pipeline
OFFICIAL ROAD MAP OF
SIOUX COUNTY
IOWA
PREPARED BY
IOWA STATE HIGHWAY COMMISSION
AMES IOWA
LYON COUNTY
PLYMOUTH COUNTY
STATE OF SOUTH DAKOTA
SIOUX
LINCOLN
SHERIDAN
GARFIELD
PLATO
WELCOME
CAPEL
LYNN
BAGLE
CENTER
WEST BRANCH
HOLLAND
WASHINGTON
READING
SHERMAN
NASSAU
EAST ORANGE

with said plant. The state and the State Highway Commission assume no responsibility for failure to give above notice.

3. That the state and the State Highway Commission assume no responsibility for damages to the applicant's property occasioned by any construction or maintenance operations on said highway subsequent to the building of the said pipe line.

4. That during the construction of said pipe line the applicant shall take all reasonable precaution to protect and safeguard the lives and property of the traveling public and adjacent property owners and shall save the state and the State Highway Commission harmless of any damage or losses that may be sustained by the traveling public or adjacent property owners on account of such construction operations.

5. That operations in the construction and maintenance of said pipe line shall be carried on in such a way as to not interfere with, or interrupt traffic on said highway.

6. That the applicant shall hold the state and the State Highway Commission harmless from any damage that may result to said highway because of the construction or maintenance of said pipe line and shall reimburse the state or the State Highway Commission for any expenditure that the state or the State Highway Commission may have to make on said highway on account of said applicant's pipe line having been constructed thereon.

7. That the applicant agrees to give the State Highway Commission forty-eight hours' notice of its intention to start construction on the highway right-of-way. Said notice shall be made in writing to the person whose name is shown below.

8. That the applicant agrees to construct pipe line crossings as follows: All pipe lines more than two (2) inches inside diameter which extend through the roadway shall be placed in casings of sufficient strength to properly carry the highway load so that the pipe may be removed from the casing for repair without disturbing the subgrade. On paved roads casings shall be placed through the subgrade by jacking or they shall be placed in a hole which has been bored through the subgrade slightly larger than the casing. Water pipes not encased shall be of copper or lead construction. If, in the opinion of the Highway Commission engineer in charge, on account of soil conditions jacking or boring is not feasible a tunnel may be driven through and the casing placed therein. In the case of roads which are not paved open trench construction may be used. All back-filling of tunnels and open trenches through the subgrade shall be carefully puddled or tamped in layers not to exceed six inches in depth. Back-filling of longitudinal trenches in the right-of-way shall be properly tamped to obviate settlement. All work shall be done in a thorough manner and left in a neat condition satisfactory to the Highway Commission engineer in charge.

9. That this permit is subject to any laws now in effect or any laws which may be hereafter enacted.

10. That this permit is subject to all the rules and regulations of the State Highway Commission and to revocation by the State Highway Commission at any time, when in the judgment of the Commission it is necessary in the improvement or maintenance of the highway or for other reasonable cause.

Recommended for approval:

Date November 27, 1939

District Engineer

Permit Granted NOV 28 1939, 19

Signed Champlin Refining Company
Name of Company

By E E Duncan

Right-of-Way & Claim Agent
Title

Address Enid, Oklahoma

IOWA STATE HIGHWAY COMMISSION

By Randall Milson
Chairman

Notice of construction to be sent to E. H. Dunn District Engineer,

Court House, Sioux City, Iowa
(address)

This permit for underground construction on right-of-way of primary road extension in ..... Iowa, shall not be effective unless and until approved by the Council and signed by the Clerk of ..... , Iowa.

This is to certify that this tentative permit ..... County, Permit No. ..... issued by the Iowa State Highway Commission, was approved by the Council of ..... , Iowa, ... , 19 ..

Signed .....
City Clerk

(This application must be filed in quadruplicate with the State Highway Commission at Ames, Iowa, for each individual pipe line crossing or installation on primary.

652

[fol. 653] EXHIBIT 41

STATE OF IOWA,
Office of the Iowa State,
Commerce Commission:

I, Geo. L. McCaughan, Secretary of the Iowa State Commerce Commission, certify that attached hereto is a true and correct copy of the application of the Champlin Refining Company, a New Mexico corporation, Enid, Oklahoma, which application was filed with the Iowa State Commerce Commission on October 2, 1939, petitioning for a permit to construct, maintain and operate a pipe line for the transmission or transportation of petroleum products in and through Plymouth, Sioux and Lyon Counties, Iowa, said application being composed of the following parts:

(1) a copy of petition form properly filled out, signed and witnessed.

(2) a copy of Exhibit "A", pages 1 and 2, being a description of route over which pipe line of Champlin Refining Company proposes to pass.

(Exhibit "B" consisting of a photostatic copy of a portion of the map of Plymouth County, Iowa, a photostatic copy of a portion of the map of Sioux County, Iowa, and a photostatic copy of the map of Lyon County, Iowa, is omitted from this copy of the application.)

(3) a copy of Exhibit "C" consisting of two pages, page 1 being a printed form of this Commission containing answers to questions thereon, and page 2 being a list of answers to question 6 (b) of page 1.

(4) Exhibit "D" composed of copies of pages 1 to 14, inclusive, being a schedule showing the property [fol. 654] of the Champlin Refining Company located in the State of Iowa, other than pipe lines.

(5) Exhibit "E" being a copy of a statement relating to said pipe line not extending longitudinally on public or railroad right of way.

(6) Exhibit "F" being a copy of statement to the effect that said line will not pass within 300' of occu-

pied residences unless the consent of the property owner is obtained.

Docket P-105

In Testimony Whereof, witness my signature and seal of the Commission at Des Moines, Iowa, this 14th day of October, 1941.

Geo. L. McCaughan, Secretary. (Seal.)

(Here follows 1 photolithograph, side folio 655)

Ia. C.C. 174

IN THE MATTER OF THE PET N OF

CHAMPLIN REFINING COMPANY, a New Mexico corporation,

BEFORE THE IOWA STATE COMMERCE COMMISSION FOR A PERMIT TO CONSTRUCT, PURCHASE

AND MAINTAIN PIPE LINE OR LINES IN

Lyon, Sioux and Plymouth

COUNTIES, IOWA.

PETITION

TO THE IOWA STATE COMMERCE COMMISSION:

(1) Comes now the Champlin Refining Company, a New Mexico corporation, authorized to transact business in the State of Iowa, whose principal office or place of business is Enid, Oklahoma and post office address is P. O. Drawer 1078, and hereby petitions the Iowa State Commerce Commission, under the provisions of Chapter 383-F2, Code of Iowa, 1935, for a permit to construct, maintain and operate a pipe line for the transmission or transportation of petroleum products, and for such purpose to lay pipes, place pumps, pressure apparatus or other stations, devices or equipment used in or upon such line which are necessary for transmitting petroleum products, under, along, over or across any public and/or private highways, grounds, waters or streams of any kind of this State, or the lands of any person, company or corporation and to acquire the necessary interests in real estate for such purposes.

(2) Your petitioner hereby prays that a permit be issued, as provided by law, granting to your petitioner, its successors and assigns, the right to construct, operate and maintain pipes, pumps, pressure apparatus or other stations or equipment for the purpose of transmitting such product, to be located in accordance with description as contained in Exhibit "A", which is attached hereto and made a part hereof.

(3) Attached hereto, and made a part of this petition and designated as Exhibit "B", are two (2) blue print copies of map on which is shown the starting point, route and terminus of the proposed line or lines; also all public highways and railroad right-of-way; the location of all streams; the location of equipment used in operation of lines, and other pertinent information.

(4) Attached hereto and made a part of this petition and designated as Exhibit "C" is a set of engineering specifications covering the engineering features, materials and manner of construction which will enter into the construction of the proposed line or lines; also the approximate length of line; diameter of pipe used; the name, address and location of each railroad to be crossed; the location of primary highways, etc.

(5) Attached hereto and made a part hereof and designated as "Exhibit "D" is showing made that the applicant complies with Section 8338-f40, Chapter 383-F2, Code of Iowa, 1935, in one of the four manners prescribed in Rule No. 6, Exhibit "D" of Rules and Regulations of your Commission.

(6) Attached hereto and made a part of this petition and designated as Exhibit "E" are copies of consents covering all public highways and railroads where a pipe line is constructed longitudinally on, over or under such property, or at other than an approximate right angle to track or highway.

(7) Attached hereto and made a part hereof and designated as Exhibit "F" is statement of number of occupied residences proposed to be passed with pipe line at a distance of less than 300 feet therefrom and this applicant agrees that consents of property owners will be obtained and filed as prescribed by the rules and regulations of your Commission.

(8) The maximum capacity of said line or lines will be 7,000 bbls daily W.C.F. at 750 lbs./sq. in.

(9) The proposed pipe line will be used for the purpose of transmitting petroleum products at the maximum pressure of 750 lbs./sq. in.; a normal inlet operating pressure of 750 lbs./sq. in.; an outlet pressure of 0 to 15 lbs./sq. in.; and will be approximately 42 miles of 6 5/8 inch O.D.

(10) The construction of the proposed line will conform to minimum requirements of the rules of the Iowa State Commerce Commission which are now in effect or may be hereafter adopted and all requirements of Chapter 383-F2, Code of Iowa, 1935.

(11) Attached is a deposit in the amount of Twenty-five Dollars ($25.00) to pay costs and expense of proceedings, exclusive of cost of publishing notices of hearing.

(12) Your petitioner respectfully prays that the Iowa State Commerce Commission fix a time and place for hearing in the matter of this petition for permit and requests that proper notice be prepared for publication once a week for two consecutive weeks in some newspaper of general circulation of Lyon, Sioux and Plymouth Counties, Iowa.

CHAMPLIN REFINING COMPANY

By E. G. Wilmoth
Representative

Dated at Enid, Oklahoma this 30th day of September 1939

STATE OF OKLAHOMA
COUNTY OF GARFIELD } ss.

FILED
OCT 2 1939

I, E. G. Wilmoth being duly sworn, on oath state that I am Pipe Line Superintendent (Official Title) of applicant above named and that I have [illegible] to execute the foregoing instrument and that I have read the foregoing petition and know the contents thereof, and that statements therein contained are true and correct as I verily believe.

E. G. Wilmoth

Subscribed and sworn to before me by the said E. G. Wilmoth

this 30th day of September 1939

L. Peterson
Notary Public

(SEAL) My commission expires on Jan 6, 1942

655

480A

[fol. 656] EXHIBIT 42

State of Iowa

Office of the Iowa State Commerce Commission

In the Matter of the Issuance of Permit to Champlin Refining Company, Enid, Oklahoma

For the Construction, Operation and Maintenance of a Pipe Line

Permanent Permit No. 126

Rock Rapids Lateral

The Champlin Refining Company, Enid, Oklahoma, authorized to transact business in this state, having complied with the requirements of Chapter 383.3, Code of Iowa, 1939, was issued Temporary Permit No. 64 dated October 24, 1939, for the construction, operation and maintenance of a pipe line for the transportation of petroleum products in and through Plymouth, Sioux & Lyon Counties, Iowa, said pipe line being six (6) inches in diameter and to operate at a maximum pressure of seven hundred fifty (750) pounds per square inch.

Pursuant to the order of this Commission and to the provisions of Chapter 383.3, Code of Iowa, 1939, Temporary Permit No. 64 is now cancelled and revoked, and this permit is hereby issued and permission and authority thereunder are hereby granted unto said Champlin Refining Company, Enid, Oklahoma, to construct, operate and maintain a pipe line for the transmitting or transportation of petroleum products and for such purpose to construct, reconstruct, repair or locate its pipes, pumps, pres-[fols. 657-662] sure apparatus or other stations, devices or equipment used in and upon such line which are necessary for the transmitting or transportation of the above products over, along and across the public and/or private highways, grounds, waters and streams of any kind of this state, or the lands of any person, company or corporation and to acquire the necessary interests in real estate for such purposes, on and along the route particularly described, to-wit:

• • • • • • •

[fol. 663] This permit is granted and issued for a period of twenty-five years from and after the date hereof unless sooner revoked, modified or terminated as provided by law, and it is expressly stated herein that this permit shall be subject to and governed by all of the provisions, conditions and requirements of Chapter 383.3, Code of Iowa, 1939, and by all of the provisions, rules and regulations of the Iowa State Commerce Commission as now exist or may be hereafter ordered or required by the said Iowa State Commerce Commission, insofar as the same may be applicable.

During the period of time this permit is in force, the said company is vested with the right of eminent domain to such extent as may be necessary and as prescribed and approved by the said Iowa State Commerce Commission, not exceeding seventy-five (75) feet in width for right of way and not exceeding one (1) acre in any one location in addition to the right of way, for the location of pumps, or other station, pressure apparatus or equipment to carry out the purposes of said permit; and in the exercise of such right of eminent domain the same proceeding shall be taken as provided for taking private property for works of internal improvements.

Provided, however, that no pipe line shall be constructed [fol. 664] longitudinally on, over or under any public highway or railroad right of way, or at other than an approximate right angle to the track or to the highway, without the consent of the proper public authority, or the railroad company's consent, nor shall it be considered that any provision of Chapter 383.3, Code of Iowa, 1939, or of this permit shall give the right of condemnation or eminent domain for such purposes.

It is further provided and as a condition of this permit that the said Iowa State Commerce Commission retains jurisdiction and may at any time hereafter and during the period of this permit make such further orders and regulations as may be necessary, and as said Commission may be authorized by law.

Signed and sealed as provided by law on March 15, 1940.

Iowa State Commerce Commission, by Barr Keshlear, Chairman.

Attest: Geo. L. McCaughan, Secretary.

[fol. 665] EXHIBIT 43

October 7, 1941.

Iowa State Commerce Commission, Des Moines, Iowa.

Attention: Barr Keshlear, Chairman

GENTLEMEN:

The Champlin Refining Company are returning, herewith, Permanent Permit No. 126, issued by your Commission under date of March 15, 1940, for the reason that the said Permit, on page 8 thereof, purports to vest the Champlin Refining Company with the right of eminent domain.

The Champiin Refining Company shows to the Commission that it is not a common carrier and does not hold itself out as a common carrier, and does not use the said pipeline for the purpose of transporting merchandise for the public.

The Company further shows to the Commission that it has never exercised or attempted to exercise the right of eminent domain in connection with the construction or operation of the said pipeline for which this permanent permit was issued. That the Company has serious doubt as to whether, not being a common carrier, this company would have any legal right to exercise the right of eminent domain.

The Company, therefore, respectfully requests that the last paragraph on page 8 of said permit, being the paragraph with respect to the right of eminent domain, be omitted, and respectfully asks that a new permit be issued, omitting any reference to the question of eminent domain.

Respectfully submitted, Champlin Refining Company of Enid, Oklahoma, by —— ——, Its Attorneys.

WPB:L.

[fol. 666] EXHIBIT 44

STATE OF IOWA,
Office of the Iowa State
Commerce Commission:

I, Geo. L. McCaughan, Secretary of the Iowa State Commerce Commission, certify that attached hereto is a true and correct copy of Permanent Permit No. 157 granted by the Iowa State Commerce Commission for the

construction, operation and maintenance of a pipe line for the transportation of petroleum products in and through Plymouth, Sioux and Lyon Counties, Iowa, to the Champlin Refining Company, Enid, Oklahoma, said permit bearing date of October 13, 1941.

Docket No. P-105. Permanent Permit No. 157.

In Testimony Whereof witness my signature and seal of the Commission at Des Moines, Iowa, this 14th day of October, 1941.

Geo. L. McCaughan, Secretary.

[fol. 667] STATE OF IOWA

Office of the Iowa State Commerce Commission

In the Matter of the Issuance of Permit to CHAMPLIN REFINING COMPANY, ENID, OKLAHOMA

For the Construction, Operation and Maintenance of a Pipe Line

Permanent Permit No. 157

Rock Rapids Lateral

The Champlin Refining Company, Enid, Oklahoma, authorized to transact business in this state, having complied with the requirements of Chapter 383.3, Code of Iowa, 1939, was issued Temporary Permit No. 64, dated October 24, 1939, for the construction, operation and maintenance of a pipe line for the transportation of petroleum products in and through Plymouth, Sioux and Lyon Counties, Iowa, said pipe line being six (6) inches in diameter and to operate at a maximum pressure of seven hundred fifty (750) pounds per square inch.

Pursuant to the order of this Commission and to the provisions of Chapter 383.3, Code of Iowa, 1939, Temporary Permit No. 64 was cancelled and revoked, and Permanent Permit No. 126, dated March 15, 1940, was issued to said company, which permit contained the right of eminent domain. We are advised that said company does not desire said right. Said Permanent Permit No. 126 is now cancelled and revoked and this permit is hereby issued and permission and authority thereunder are hereby granted unto said

Champlin Refining Company, Enid, Oklahoma, to construct, operate and maintain a pipe line for the transmitting or transportation of petroleum products and for such purpose to construct, reconstruct, repair or locate its pipes, [fols. 668-673] pumps, pressure apparatus or other stations, devices or equipment used in and upon such line which are necessary for the transmitting or transportation of the above products over, along and across the public and/or private highways, grounds, waters and streams of any kind of this state, or the lands of any person, company or corporation and to acquire the necessary interests in real estate for such purposes, on and along the route particularly described to-wit:

* * * * * * *

[fol. 674] This permit is granted and issued for a period of twenty-five years from and after the date hereof unless sooner revoked, modified or terminated as provided by law, and it is expressly stated herein that this permit shall be subject to and governed by all of the provisions, conditions and requirements of Chapter 383.3, Code of Iowa, 1939, and by all of the provisions, rules and regulations of the Iowa State Commerce Commission as now exist or may be hereafter ordered or required by the said Iowa State Commerce Commission, insofar as the same may be applicable.

No pipe line shall be constructed longitudinally on, over or under any public highway or railroad right of way, or at other than an approximate right angle to the track or to the highway, without the consent of the proper public au- [fol. 675] thority, or the railroad company's consent, nor shall it be considered that any provision of Chapter 383.3, Code of Iowa, 1939, or of this permit shall give the right of condemnation or eminent domain for such purposes.

It is further provided and as a condition of this permit that the said Iowa State Commerce Commission retains jurisdiction and may at any time hereafter and during the period of this permit make such further orders and regulations as may be necessary, and as said Commission may be authorized by law.

Signed and sealed as provided by law on October 13, 1941.

Iowa State Commerce Commission, by Barr Keshlear, Chairman.

Attest: Geo. L. McCaughan, Secretary.

[fol. 676] EXHIBIT 45

Valuation Order No. 26—Revised

Instructions to Govern the Preparation and Filing by Common Carriers by Pipe Line of Maps, Charts and Schedules as Prescribed by the Interstate Commerce Commission, in Accordance With Section 19a of the Interstate Commerce Act, Revised Issue. Effective December 31, 1934.

[fol. 677] Interstate Commerce Commission, Washington, D. C.

Order

At a General Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 31st day of December, A. D. 1934.

The subject of specifications for maps, charts, and schedules to be prescribed for and applied by common carriers by pipe lines being under consideration:

It is ordered, That the specifications for maps, charts, and schedules, Section A to F, inclusive, a copy of which is filed with and made a part of this order, are hereby approved and adopted.

It is further ordered, That the said specifications for maps, charts and schedules be, and the same hereby are, prescribed for the use of all pipe line companies subject to the provisions of the act to regulate commerce, as amended, in the preparation of all maps, charts, and schedules which shall be required to be prepared for or filed with this Commission in accordance with section 19a of the act to regulate commerce; that each and every company and each and every receiver or operating trustee of any such company be required to prepare and furnish to the Commission all maps, charts, and schedules in conformity herewith, and that a copy of said specifications be sent to each and every such company and to each and every receiver or operating trustee of any such company.

It is further ordered, That every pipe line company and each and every receiver or operating trustee of any such company shall prepare and furnish to the Commission in accordance with such specifications complete maps, charts, and schedules of its property as it exists on the date assigned for the valuation of that property within 60 days

after such date of valuation; provided, however, that no such company shall be required to prepare or file any map, chart, or schedule within less than 60 days from the receipt of written notice from the Director of the Bureau of Valuation, of this Commission, stating the date of valuation for such company.

It is further ordered, That Valuation Order No. 26, effective September 10, 1934, be, and it is hereby, superseded and cancelled as of the effective date of this order.

By the Commission, Division 1.

George B. McGinty, Secretary. (Seal.)

[fol. 678] Section A—Specifications for the Preparation of Maps.

I. General

1. Intent.

In order that the Interstate Commerce Commission may investigate, ascertain, report, and record the value of property of common carriers by pipe lines as it now exists and as it hereafter may be extended, improved, or changed, it is essential that certain maps shall be available, and copies thereof shall be filed with the Commission whenever requested.

For convenience in inventorying and reporting the property of pipe line carriers valuation sections shall be established subject to the approval of the Bureau of Valuation. Generally a valuation section as referred to herein may include the properties of an owning carrier within state lines. In no case, however, shall a valuation section extend beyond state lines or include property owned by more than one common carrier by pipe lines.

Where maps already in existence contain in the opinion of the Commission the necessary information in such form that it is reasonably available, these will be accepted.

II. Maps Required

2. Classes and Titles.

Two general classes of drawings shall be made by the carrier, viz:

(a) Right-of-way maps.

(b) Land and structural maps.

A single copy only of right-of-way maps need be filed.

Land and structural maps shall be filed in duplicate.

The maps shall clearly distinguish between lands, rights of way and facilities owned or used for gathering lines and those owned or used for trunk lines.

The maps shall be made of materials of standard quality, using conventional symbols and plain lettering.

III. Form of Maps

Where existing maps do not meet the requirements of the Commission they shall be prepared as follows:

[fol. 679] 2. Size of sheets.

The maps shall be made in sheets 11 x 17 inches. A plain single line border shall be drawn on each sheet, dimensions inside of which shall be 10 by 16 inches. When more than one sheet is required to show a property, plat shall be made upon "matched marked" sheets in such manner as to require a minimum number.

4. Scales.

The right-of-way maps shall be made on a scale of 1 inch equals 1,000 feet, or 1 inch equals 2,000 feet.

The land and structural maps shall be made on a scale of 1 inch equals 100 feet, 1 inch equals 200 feet, or 1 inch equals 400 feet.

5. Arrangement of data.

The maps shall be made with the zero or lowest numbered station at the left side of each sheet and shall be platted from left to right. Where the use of this method would involve the abandonment of established survey station numbers, the platting may be done in such a way as to preserve them, provided the maps for any given line or branch are continuous in same direction between termini of line or branch. The general direction of the line shall be as nearly as possible parallel to and half way between the long sides of sheets, so that the maximum space each side of platted lines may be available for showing adjacent topography and property lines and for making notes as to physical property.

6. Cardinal points.

On all maps an arrow showing the true north and south line (as nearly as can be ascertained from existing rec-

ords) shall be placed. This arrow shall not be less than 3 inches in length and shall have the letter "N" marked at its north end.

7. Indexing.

All right-of-way and land and structural sheets shall be numbered serially, each beginning with sheet 1. The sheets representing valuation sections shall form separate series, and the valuation sections shall be numbered serially with the letter "V" preceding the number. Index numbers shall be in lower right-hand corner of the sheets and inclosed in plain, single line circles one inch in diameter. Valuation section numbers shall be in the upper half of circles and sheet number below with straight lines between.

[fol. 680] 8. Title.

The title shall be placed as near the lower right-hand corner as practicable. The following information shall be given therein:

(a) Corporate name of the pipe line company.

(b) Name of the operating company.

(c) Beginning and ending survey station numbers on sheet.

(d) Scale or scales.

(e) Date as to which maps represent the facts shown thereon.

(f) Office from which issued.

9. Certification.

A certification in legal form as to the correctness of all maps shall be executed and shall accompany such maps when submitted to the Commission.

IV. Data Required

10. Right-of-way map.

On the right-of-way map shall be shown the following data:

(a) Route of the right of way and alignment and number of pipe lines indicated by heavy line or lines, size, and date installed.

(b) Beginning and termination of section covered by map indicated by survey stations, mile posts, cities or towns.

(c) Length of line shown on map in feet where possible, or in miles to the nearest hundredths.

(d) Governmental lines. State and county lines or other political subdivisions.

(e) Topography. Topographical data such as location and names of cities, town-, important water courses, railways, and such other data as will assist in locating and identifying the property.

(f) Indexing data. Location covered by land and structural maps shall be shown by a circle on the right-of-way maps, placing in the circle reference to the land and structural map number. Where not practical to place the circle in exact location on the right-of-way maps it may be placed at one side with arrow from circle to exact location.

(g) Survey stations of all connecting or branch lines.

The term "right-of-way" as used herein, includes only pipe line easements as distinguished from lands owned or used.

[fol. 681] 11. Land and Structural map.

On the land and structural map shall be shown the following data:

(a) The location and extent of lands owned or used, no matter how acquired, for storage, station, office, shop and other grounds.

(b) Boundary lines and dimensions of each separate tract acquired.

(c) Each tract of land shall be given a parcel number and listed serially on B. V. Form No. 623.

(d) Where known, the property lines of adjacent land owners, the survey station of important intersections of property lines and the names of owners of adjacent lands.

(e) Section, township, county, state, city, town, village, or other governmental lines, with names or designations; the width and names of streets and highways which intersect or adjoin the property of the carrier; and the survey station at all such points of crossing or intersections.

(f) The section and quarter section lines for a maximum distance of one mile on each side of the property where the

adjoining land has been subdivided into townships and sections; such data as to divisions, tracts, streets, alleys, blocks and lots where the land has been divided in some other way than by sections.

(g) Survey stations of all connecting or branch lines.

(h) All important fixed improvements in general outlines together with survey station thereof.

(i) Water courses, railway and highway crossings, together with names thereof.

Section B—Corporate History and Development of Fixed Physical Property

Every common carrier by pipe line shall prepare a statement showing the following facts as to each corporation, company, or firm, at any time connected with said carrier by pipe line.

1. Give name of corporation, company, or firm; date of incorporation, and date of organization. If corporation, state whether incorporated under general law or by special act. If incorporated under general law, state where articles of incorporation were filed. If incorporated by special act, give reference to the act.

[fol. 682] 2. Describe the property, or portion of property, constructed by each corporation, company, or firm, and show as to each such property, or portion of property, as so constructed, the termini and mileage of each trunk line, the total mileage of gathering lines, and the dates of construction.

3. State length of time any such property, or portion of property, was actually operated by any such corporation, company, or firm, giving, in each instance, date of beginning and date of conclusion of such operation.

4. If any such corporation has gone out of existence, describe the proceedings by virtue of which the dissolution took place. If any such corporation is still in existence, state where its records are kept and give name and address of person who has custody of them.

5. State fully the chain of title by which the present corporation has acquired the property which it now owns or operates. In this connection, prepare and file with the Com-

mission, as aforesaid, a schedule of all deeds, leases, reorganization proceedings and other instruments bearing upon the corporate history, and assemble and arrange the same for inspection and examination by representatives of the Commission.

Section C—Schedules of Lands

General

Every common carrier by pipe line shall prepare, on forms similar to sample form B. V. 623 hereto attached, typewritten schedules in duplicate, the original to be carbon backed, showing as to each instrument through which such carrier has derived title to or interest in any parcel of land owned or used by it for the purposes of a common carrier, the character and date of the instrument, custodian's number, and grantor and grantee named therein. Such schedules shall also show as to each parcel of land owned or used by the carrier, for its purposes as a common carrier, the number assigned thereto on the maps required by Section A of this order, the area of the parcel and the date it was dedicated to public use, and the cost of the parcel to the carrier when so dedicated. If the parcel referred to is used but not owned, the rental or other consideration given for its use must be so indicated. If a portion of the parcel has been sold or retired after the parcel was dedicated to common carrier purposes as aforesaid, the carrier shall show in such schedule the amount of money or other consideration received for the portion so sold or retired. If such [fol. 683] portion disposed of was originally received as an aid, gift, grant or donation, the area disposed of shall also be shown.

Every carrier by pipe line shall also prepare on forms similar to sample form B. V. 625 hereto attached, additional typewritten schedules in duplicate, the original to be carbon backed, showing as to each instrument through which such carrier has derived title to or interest in any parcel of land held by it for purposes other than those of a common carrier, the same information and data required with respect to B. V. Form 623 hereinbefore referred to, and in addition thereto the date and cost of any improve-

ment placed by the carrier on such parcels subsequent to their acquisition.

Special Instructions

(1) Schedules on B. V. Form 623 shall be prepared for all lands owned or used. Land held in connection with gathering lines shall be separated from those held in connection with trunk lines.

(2) In the absence of deeds to lands owned, resort shall be had to county, parish, or other properly authenticated records for data required on B. V. Forms 623 and 625.

(3) Costs to be reported on Forms B. V. 623 and 625 are those contained in the records maintained by the accounting department of carriers. When these records are missing or deficient in the information sought, resort may be had to any other records that will show the costs required by the forms. In all cases, whether the information is obtained from the accounting records of the carrier or from other records or documents, the carrier must be prepared to point out to the accountant of the Commission the exact source from which the information was obtained so that the accountant of the Commission can examine this record without further search upon his part. The carrier may do this either by preparing a working list of the sources from which the information was derived, which can be exhibited to the accountant of the Commission, or by indicating that source in the column of "Remarks" upon the return itself, as "Voucher 196—September, 1924."

[fol. 684] (4) If the amount paid for any parcel of land cannot be ascertained from the accounting or other authentic records of a carrier, the amount named in the deed as the consideration shall be reported on Forms 623 and 625 as the original cost if the amount is substantial and was actually paid by the carrier.

(5) Columns showing considerations in money shall be footed and summaries made of such footings by valuation sections. Valuation section summaries shall in turn be summarized by states, and the state summaries brought together to show the grand total for all lands reported on B. V. Forms 623 and 625.

(6) Valuation section summaries shall be prepared to show, separately, expenditures for lands owned or used, as indicated below:

For land owned:

(a) Payments for, or bare cost of, land.
(b) Damages.
(c) Improvements on abutting property.
(d) Assessments for public improvements.
(e) Miscellaneous or incidental costs.

For lands used but not owned:

(a) Payments for right of use (excluding rental payments).
(b) Damages.
(c) Miscellaneous or incidental costs.

[fol. 685] Instructions for B. V. Form No. 623

The first and second columns shall contain the number assigned to each parcel of land and reference to map of the carrier, upon which such parcel appears.

The third column shall contain the number of the file in which each instrument conveying title to or interest in each parcel of land is kept by the custodian of the carrier.

The fourth column shall contain the legal character of the instrument through which title to or interest in each parcel of land has been derived, such as deed, quit claim deed, condemnation, ordinance, grant, donation, etc., and the date thereof.

The fifth column shall contain the name of the grantor in deeds, the defendant in condemnation suits, the name of the town, city, or village in ordinances, and the donor in grants and donations.

The sixth column shall contain the name of the individual or corporation to which the conveyance, etc., was made.

The seventh and eighth columns shall contain the area of each parcel of land as now owned and used for common-carrier purposes, said area to be shown either in acres or square feet as is appropriate.

The ninth column shall contain the date when dedicated to public use.

The tenth column shall contain the amount paid by the carrier for the acquisition of each parcel when originally acquired, cost of improvements placed on abutting property,

or damages thereto, assessments for public improvements applicable to lands owned and used, and any other expenditures incurred as part of the consideration for the conveyance, etc. Miscellaneous or incidental expenditures, such as material, appraisal, recording fees, etc., need not be shown in detail; only the lump sum applicable to each parcel need be reported.

[fol. 686] The eleventh column shall contain a brief description of the character of each entry made in the tenth column.

The twelfth column shall contain the amount received from the sale, or retirement, of any portion of a parcel, disposed of subsequent to date originally acquired.

The thirteenth column shall contain the area of any such portion of a parcel, disposed of, in which parcel was originally received as an aid, gift, grant or donation.

The fourteenth column shall contain any miscellaneous information relevant to the data required to be placed in the other columns.

Instructions for B. V. Form 625

Follow instructions for columns 1 to 8, inclusive, of B. V. Form 623.

The ninth column shall contain the amount paid by the carrier for the acquisition of each parcel of land, including the improvements thereon, when originally acquired, etc., miscellaneous or incidental expenditures, such as notarial, appraisal, recording fees, etc., need not be shown in detail; only the lump sum applicable to each parcel need be reported.

The tenth column shall contain a brief description of the character of each entry made in the ninth column.

[fol. 687] The eleventh and twelfth columns shall contain the date and cost of the construction of any improvements by the carrier on each parcel of land subsequent to its acquisition.

The thirteenth column shall contain the amount received from the sale, or retirement, of any portion of a parcel, disposed of subsequent to date originally acquired. If a portion of any improvements placed on a parcel subsequent to its acquisition has been sold, the actual consideration received therefor shall also be shown in this column.

The fourteenth column shall contain the area of any such portion of a parcel disposed of, if such parcel was originally received as an aid, gift, grant or donation.

The fifteenth column shall contain the consideration recited in the instrument through which title to or interest in each parcel of land has been derived, where special provisions, conditions, or covenants are recited other than the consideration shown in the ninth column; the owner of the improvements on each parcel where such owner is not the carrier; a brief description of the improvements placed by the carrier upon each parcel subsequent to its acquisition, and any miscellaneous information relevant to the data required to be placed in the other columns.

(Here follow 2 photolithographs, side folios 688-689)

B. V. Form No. [illegible]

OWNER

OPERATING COMPANY

STATE COUNTY

VALUATION SECTION

FROM TO

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

LANDS OWNED OR USED FOR LINE OPERATIONS

ACCOUNT NO. —LAND

AS OF 19

SHEET NO. 11 OF SHEETS (THIS FORM)

DATE COMPILED

COMPILED BY

CORRECT

TITLE

Map No. (1)	Parcel No. (2)	Custodian's No. (3)	Kind and Date of Instrument (4)	Grantor (5)	Grantee (6)	AREA IN ACRES OR SQUARE FEET: Acres (7)	AREA IN ACRES OR SQUARE FEET: Square Feet (8)	Date of Dedication to Public Use (9)	COST OF PARCEL WHEN ORIGINALLY ACQUIRED OR CONSIDERATION FOR USE: Amount (10)	COST OF PARCEL WHEN ORIGINALLY ACQUIRED OR CONSIDERATION FOR USE: Character of Expenditure (11)	SALE OF PORTION OF PROPERTY: Amount Received (12)	SALE OF PORTION OF PROPERTY: Area of Portion Sold if an old (13)	REMARKS (14)

4961B

R. V. Form No. [illegible]

OWNER _____

OPERATING COMPANY _____

STATE _____ COUNTY _____

VALUATION SECTION _____

FROM _____ TO _____

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

LANDS, INCLUDING IMPROVEMENTS THEREON, HELD FOR PURPOSES OTHER THAN THOSE OF A COMMON CARRIER

AS OF _____ 19__

SHEET NO. 12 OF _____ SHEETS (THIS FORM)

DATE COMPILED _____

COMPILED BY _____

CORRECT _____

TITLE _____

Map No.	Parcel No.	Custodian's No.	Kind and Date of Instrument	Grantor	Grantee	AREA IN ACRES OR SQUARE FEET		ORIGINAL COST OF PROPERTY WHEN ACQUIRED		DATE AND COST OF SUBSEQUENT IMPROVEMENTS		SALE OF PORTION OF PROPERTY		REMARKS
						Acres	Square Feet	Amount	Character of Expenditure	Date	Amount	Amount Received	Area of Portion Sold If an Aid	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)

[fol. 690] Section D—Machinery and Equipment

There shall be prepared on forms like sample form B. V. 627 attached hereto, statements in duplicate concerning the carrier's equipment and machinery, showing in detail the information specified in said attached form.

The registers and statements covered by said attached form shall be separately made for the following accounts, as prescribed by the Interstate Commerce Commission in its Uniform System of Accounts for Pipe Lines, effective January 1, 1935, namely:

Account number			
Gathering Lines	Trunk Lines	General	Title
107	157		Boilers
108	158		Pumping equipment
109	159	179	Machine tools and machinery
110	160		Other station equipment
112	162		Delivery facilities
115	165	185	Vehicles and other work equipment
116	166	186	Other property

Costs reported shall be those contained in accounting records maintained by the carrier, except that in the absence or incompleteness of such records, the deficiency may be supplied by reference to the records of the mechanical or other department.

Estimates of cost shall be plainly identified as such by appropriate symbol and explained in a foot note showing the name and title of the official responsible for the estimates. When, in the absence of original cost, appraised values are reported, that fact must be shown by foot note giving the date of the appraisal.

The several elements of cost of a given unit shall be cross-added and entered in the "Grand total" column opposite each such unit. Individual cost columns and the "Grand total" column shall be footed and a balance struck for each sheet. The footings of those sheets shall be summarized to show separately the cost of each class of equipment, kind of machinery, etc.

Miscellaneous small tools, belting, shafting, etc., may each be grouped in one item on B. V. Form 627 and separate exhibit attached showing detail, description, etc.

Separate reports on B. V. Form 627 shall be made for all machinery and equipment assigned for use on trunk lines as distinguished from that assigned for use in connection with gathering lines.

(Here follows 1 photolithograph, side folio 691)

I. V. Form No. 577

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

OWNER _____

OPERATING COMPANY _____

STATE _____ COUNTY _____

VALUATION SECTION _____

BY _____
(NAME OF REPORTING CARRIER)

ACCOUNT NO. _____

SHEET NO. 14 OF _____ SHEETS (THIS FORM)

DATE COMPILED _____

COMPILED BY _____

CORRECT _____

TITLE _____

DATE		Carrier No.	DESCRIPTION	No. of Units	NET WEIGHT	FOUNDATION		F. O. B. and Receiving Points	ORIGINAL COST IN DOLLARS							
Definitely Purchased	Installed / Date of Installation		Make, Serial No., Kind, Motor, Size, Capacity, Model, Type, Special Features and Appliances (If reconditioned, show date built and from whom purchased.)		(Pounds Per Unit)	Excavation Cu. Yds.	Masonry Cu. Yds.		At F. O. B. Point	Freight Paid	Drayage	Installation, Test, Etc.	Foundation	Total	Net Cost of Additions and Betterments	Grand Total

[fol. 692] Section E—Prices of Materials, Construction Costs, and Rates Paid Labor

There shall be prepared a schedule showing the purchases made and net prices paid for such purchases, projects constructed, and the costs of same and the rates of compensation paid its employees, in the manner prescribed on B. V. Forms 628 to 633, inclusive, and complying with the following instructions:

The purchases, contracts and company work projects are to be the largest ones for each of the years 1929-1934, inclusive, and not less than five per year when that many purchases have been made or that many contracts let.

Instructions for B. V. Forms 628, 629, 631 and 632

(1) The cost of inspection or testing will be shown only on Form 632. With this exception, no labor costs are to be shown on these forms.

(2) Fill each column of the forms by entering the information called for; otherwise by the notation "Unknown" or "None." Any additional information or explanation necessary to proper understanding of data should also be given.

(3) If the prices given were fixed by competitive bids, so state.

(4) The name of the person compiling the data should be given in the space provided for that purpose, and the complete data shall be certified as "Correct" with the signature and title of the person so certifying on each form.

(5) The report shall be typewritten on white tough paper.

Instructions for B. V. Form 630

If constructed under contract, or by company work, give detailed costs in place. If such data are not available, furnish in detail the carrier's preliminary estimate.

Follow instructions Nos. (2), (3), (4), and (5).

Instructions for B. V. Form 633

Show in column "Remarks" the number of hours included in "Rate per Day."

Follow instructions Nos. (2), (4), and (5).

I. V. Form No. 600

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

LINE PIPE

SHEET NO. 16 OF _____ SHEETS (THIS FORM)

DATE COMPILED _____

COMPILED BY _____

CORRECT _____

TITLE _____

OWNER _____

OPERATING COMPANY _____

Year Purchased (1)	MAKER (2)	DESCRIPTION					WEIGHT IN POUNDS PER LIN. FT.		Point of Original Shipment (10)	F. O. B. Point (11)	Quantity Purchased in Lin. Ft. (12)	COST PER LIN. FT. AT F. O. B. POINT		REMARKS (15)
		Size or Nominal Bore (3)	Standard Dimension by Index (4)	Material and Grade (5)	Longitudinal Electric Weld or Seamless (6)	Plain End or Threaded (7)	Plain Ends (8)	With Threads and Couplings (9)				Plain Ends (13)	With Threads and Couplings (14)	

INSTRUCTIONS TO CARRIERS: Show on this form for each calendar year, 1923-1934 inclusive, at least the five largest representative purchases. Otherwise, show each purchase as have been made.

I. C. C. Form No. 599

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

OWNER

OPERATING COMPANY

SHEET NO. 17 OF SHEETS (THIS ITEM)

DATE COMPILED

COMPILED BY

CORRECT

TITLE

LINE PIPE FITTINGS

(1)	MAKER (2)	DESCRIPTION					Point of Original Shipment (8)	F. O. B. Point (9)	Quantity Purchased Each (10)	Cost Per Each at F. O. B. Point (11)	REMARKS (12a)
		Size or Nominal Bore (3)	Nominal Diameter in Inches (4)	Material (5)	Kind and Description (6)	Weight in Pounds Each (7)					

INSTRUCTIONS TO RESPONDENTS: Show on this form for each calendar year 1913-1914 inclusive, at least the five largest representative purchases. Otherwise, show such purchases as have been made.

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

PIPE LINE CONSTRUCTION

SHEET NO. 15 OF ____ SHEETS (THIS FORM)

DATE COMPILED ____

COMPILED BY ____

CORRECT ____

TITLE ____

Year	LOCATION			Trunk or Gathering	Length in Miles	Ave. Depth of Ditch in Inches	Ave. Width of Ditch in Inches	Kind of Enc.	Ave. Head in Miles	DESCRIPTION OF PIPE				Type of Coupling	Type of Coating	COST PER FOOT IN CENTS									
	From	To	State							Nominal Diam. in Inches	Length of Joint	Type of End	Wt. in Lbs. Per Foot			Engr. or Survey	Clearing Right of Way	Boating and Scrapping	Ditching	Laying	Coating	Back-filling	Damages	Inspection and Testing	Total Cost
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)

INSTRUCTIONS TO CARRIERS: Keep contract or company work on separate sheets and indicate kind of work.

B. V. Form No. 501

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

OIL TANKS

SHEET NO. 19 OF SHEETS (THIS FORM)

OWNER

OPERATING COMPANY

DATE COMPILED

COMPILED BY

CORRECT

TITLE

Year Purchased (1)	MAKER (2)	DESCRIPTION								Quantity Purchased (11)	Point of Original Shipment (12)	F. O. B. Point (13)	Cost Each at F. O. B. Point (14)	Cost Each Erected (15)	REMARKS (16)
		New or Second Hand (3)	Nominal Size in Barrels (4)	Material (5)	Diameter in Feet (6)	Height in Feet (7)	Type of Roof (8)	Kind and Description, Including Appurtenances (9)	Weight in Pounds (10)						

INSTRUCTIONS TO CARRIERS: Show on this form for each calendar year, 1910-1914 inclusive, at least the five largest representative purchases. Otherwise, show each purchase as have been made.

I. C. C. Form No. 555

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

COMMUNICATION SYSTEMS

80

SHEET NO. _____ OF _____ SHEETS (THIS FORM)

OWNER _____

OPERATING COMPANY _____

DATE COMPILED _____

COMPILED BY _____

CORRECT _____

TITLE _____

Year Purchased (1)	Use (2)	Length in Miles (3)	DESCRIPTION (4)	MAKER (5)	Code or Catalog Number (6)	From Whom Purchased (7)	Point of Original Shipment (8)	F. O. B. Point (9)	Unit (10)	Units Purchased (11)	Weight Per Unit (12)	COST PER UNIT			
												At F. O. B. Point (13)	Transportation (14)	Freight Paid (15)	Total (16)

INSTRUCTIONS TO CARRIERS: Under description, give length, class and material of poles and cross-arms; give type, gauge, number of poles, insulation, sheath and armor of cables. Give principal items of equipment, switchboards, etc. Give gauge and material of line wire.

I. C. C. Form No. 656

REPORT TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

COST DATA

RATES OF COMPENSATION

SHEET NO. 22 OF _____ SHEETS (THIS FORM)

OWNER _____

OPERATING COMPANY _____

DATE COMPILED _____

COMPILED BY _____

CORRECT _____

TITLE _____

Year	OCCUPATION	RATE PER									REMARKS
		LABOR			HAUL						
		Hour	Day	Month	Hour	Day	Month	Lin. Ft.	Cwt.	Ton Miles	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	
	Foreman										
	Assistant Foreman										
	Common Laborers										
	Teams including drivers										
	Trucks 2 2										
	Linemen										
	Groundmen										
	Welders										

NOTE: Where rates vary for different territorial regions, show rates separately.
If rates vary due to capacity of trucks or trains, show capacity under "Remarks" column.

[fol. 699] Section F—Aids, Gifts, Grants and Donations (Other than lands reported on B. V. Forms 623 and 625)

Every common carrier by pipe line shall prepare a report in duplicate on forms like sample B. V. Form No. 626 attached, showing, by states, territories, and the District of Columbia, as to every aid, gift, grant or donation, to such common carrier, or to any previous corporation which has operated in the past all or any portion of such property, the following information:

1. Show reference to the ordinance, agreement or other instrument under which the aid, gift, donation, or grant was made, showing the conditions attached thereto.

2. State the character and extent of the aid, gift, donation, or grant received in the form of money, land, material, property, service, credit, etc. in accordance with the information called for on B. V. Form 626. Only such land as is received as a grant or donation and entirely disposed of prior to date of valuation should be reported on this form. For such lands show area and proceeds from sale or other disposition.

3. Show the amount and value of any concession and allowance made by the carrier or by any previous owning corporation to the donor in consideration of any aid, gift, donation, or grant.

4. Show by foot notes and appropriate symbols, with respect to each item upon this return a reference to the account to which the item was credited.

5. The sum of the aid, gifts, grants or donations reported shall be compared with any credits made in the books of accounts in respect thereto and an explanation of any differences shall be made.

6. The carrier shall explain how it has determined the estimated value at time of acquisition of aids, gifts, grants, or donations, other than cash.

(Here follows 1 photolithograph, side folio 700-701.)

B. V. Form No. [illegible]

SHEET NO. 23 OF _____ SHEETS (THIS FORM)
DATE COMPILED _____
COMPILED BY _____
CORRECT _____
TITLE _____

REPC TO INTERSTATE COMMERCE COMMISSION

BUREAU OF VALUATION

Report of aids, gifts, grants, or donations (other than lands shown on B. V. Forms 623 and 625) received by the _____ Company or its predecessors, to December 31, _____, from the Government of the United States, or from any State, County, or municipal government, or from any individual, association, or corporation.

Name of corporation that directly or indirectly received the aid, gift, grant, or donation from the donor. (1)	DONATED BY (2)	Description of aid, gift, grant, or donation, and if land, area and proceeds from sale. (3)	Date of Acquisition (4)	Instrument or Act by Which Acquired (5)	Value of aid, gift, grant, or donation at date of acquisition. (6)	Recorded money expenditures made by carrier to acquire the aid, gift, grant or donation. (7)	REMARKS (8)

[fol. 702] EXHIBIT 46

Interstate Commerce Commission

Washington, D. C.

Order

At a General Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 12th day of April, 1935.

The subject of preparing a field inventory of the property of all common carriers by pipe lines for purposes of valuation under Section 19a of the Interstate Commerce Act, as amended, being under consideration:

It is ordered, That every common carrier owning or operating a pipe line whose property is subject to valuation under Section 19a of the Interstate Commerce Act, as amended, and every receiver or operating trustee of such a carrier shall prepare in duplicate and file with the Commission the original copies of a complete inventory of its property, except land, showing the quantities, units, and classes or kinds of property and the condition thereof.

It is further ordered, That such inventory shall be made as of such date as shall be prescribed by the Director of Valuation, shall begin within 30 days from the receipt from the Director of Valuation of written notice of this order and of the date of valuation prescribed, and shall be completed and filed within such time as he shall require, provided that he shall allow in all cases a reasonable time for the preparation and filing of such inventory which shall in no case be less than 30 days.

It is further ordered, That regulations and instructions to govern the preparation and filing of inventories of their property by carriers by pipe lines, are hereby approved and adopted, and a copy thereof is attached to and made a part of this order.

It is further ordered, That the said regulations and instructions be, and they are hereby prescribed for the use of all carriers by pipe line subject to the provisions of the Interstate Commerce Act, as amended, and all receivers or operating trustees of such carriers, in preparing and reporting inventories of their property as hereinabove required, and that a copy of said regulations and instruc-

tions be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

By the Commission, division 1. George B. McGinty, Secretary. (Seal.)

[fol. 703] Regulations and Instructions to Govern the Preparation and Filing of Field Inventories of the Property of Pipe Line Carriers

General

(1) *The Intent of Instructions.*

These instructions are intended to describe how the property of the carriers shall be inventoried and what data are to be ascertained and recorded.

(2) *Duties of Representatives of the Bureau of Valuation.*

Representatives of the Bureau of Valuation designated for that purpose shall supervise, review and check the inventory of the property of the carriers and shall be empowered to sign the field notes taken in the making of the inventory.

In case of disagreement with the representatives of the carriers as to facts, the representatives of the Bureau shall file with the field notes a statement of the exceptions taken to the inventory notes.

(3) *Duties of Carriers.*

All pipe line carriers subject to the provisions of the Interstate Commerce Act, shall record on forms supplied to them, an inventory of all of the property owned or used by them and its condition, in accordance with Valuation Order No. 27 and the instructions herein provided. Sample field notes taken on prescribed forms recording property usually encountered on pipe lines in general are attached hereto and made a part of these instructions and shall serve as a guide in preparing the inventory.

(4) *Inventory.*

(a) *Classification.*—Property shall, as nearly as practicable, be classified in conformity with the classification set forth in the carrier property accounts contained in

the Uniform System of Accounts for Pipe Lines prescribed by the Commission, as follows:

[fol. 704]

Gathering line account	Trunk line account	General	Title
103	153		Line Pipe
104	154		Line Pipe Fittings
105	155		Pipe Line Construction
106	156	176	Buildings
107	157		Boilers
108	158		Pumping Equipment
109	159	179	Machine Tools and Machinery
110	160		Other Station Equipment
111	161		Oil Tanks
112	162		Delivery Facilities
113	163	183	Communication Systems
114	164	184	Office Furniture and Equipment
115	165	185	Vehicles and Other Work Equipment
116	166	186	Other Property

The inventory shall be made separately for each of the following classifications:

(1) Wholly owned and used.
(2) Jointly owned and used.
(3) Wholly owned but not used.
(4) Wholly used but not owned.
(5) Property owned but not used for carrier purposes.

In the case of property coming within the classification of (2), (3), and (4), where the ownership and use of the same piece of property is involved, a definite understanding shall be reached between the interested parties as to which carrier shall ber esponsible for the field work.

(b) *Valuation Sections.*—The inventory shall be prepared and the required data shown by what is known as "valuation sections." Valuation sections shall consist of particular portions of the property designated by termini. All such sections must be approved by the Bureau of Valuation. The trunk lines and the gathering lines shall be distinguished by the use of capital letters "T" and "G" respectively, following the valuation section number.

(c) *Form of Notes.*—All notes shall be made in duplicate. When completed for a particular valuation section, notes shall be bound, signed by representatives designated by the carrier, and both copies forwarded to the Bureau's field representatives. The originals and carbons shall not

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be separated until reviewed and checked by them, after which the carbon copy will be returned to the carrier. [fol. 705] Each volume or book of notes shall be accompanied by a title page which shall show:

The name of the carrier making the inventory.
The valuation section number.
Beginning and ending survey station number and mile post, if any, on the chaining notes.
The kind of notes, whether chaining, structural, mechanical, or communication.

Sheets for the various valuation sections shall be numbered consecutively by accounts and the date for each day's notes shown on each page.

The chaining (Accounts 103, 153, 104, 154, 105 & 155) structural (Accounts 106, 156, 176, 110, 160, 111, 161, 112, 162, 114, 164, 184, 116, 166 and 186), mechanical (Accounts 107, 157, 108, 158, 109, 159, 179, 115, 165, and 185), and communication (Accounts 113, 163 and 183) notes shall be bound in separate books.

(d) *Condition of Property.*—Notes in respect to the condition of the property shall be made in accordance with the following outline:

(1) Age.—State the year of construction, installation or purchase of the property, whether new, secondhand, or reconditioned. If secondhand, state, if possible, length of service elsewhere, noting course of data.

(2) Wear and decay.—Record such notes as may be justified from observation. Such test pits as are necessary to complete an adequate record of the physical condition of the buried pipes and fixtures shall be dug. The test pits should be dug at such intervals as required in order to reveal the condition of the line. A 4-foot section of the pipe shall be exposed and thoroughly cleaned. This section of pipe shall then be marked off in four 1-foot sections, and maximum pit depths measurements made and recorded for each of the 1-foot sections. They shall be recorded in the manar set forth in the sample inventory. Additional record shall be kept of any suggested conditions having a bearing upon the physical condition of the pipe or upon its expected normal service life.

(3) Maintenance.—Record whether maintenance is normal; that is, record whether standard of maintenance is such as to secure average service life.

(4) Record Total Estimated Service Life.—Record any conditions which tend to shorten or lengthen service life. Record in special notes any evidence as to inadequacy or obsolescence.

[fol. 706] (e) *Non-carrier Property.*

Definition.

Non-carrier property is property owned or leased by carrier, but not used for common-carrier purposes.

Non-carrier property shall be inventoried separately and included in the special notes.

(f) *Abandoned Property.*

When the carrier makes a claim for abandoned property, the inventory notes respecting same shall be bound in the special notes.

(g) *Additions, Betterments and Retirements.*—The field inventory shall reflect true conditions in the property as of date of valuation, December 31, 1934. Where property has been constructed or installed between date of valuation and date of field work, it need not be inventoried unless directed by the Bureau's representatives. In such cases, it should be separately recorded and marked "Installed after date of valuation." In the case of property retired after date of valuation, an effort should be made to secure an inventory of the retired property in the field or from records.

(h) *Detail of Inventory.*—There shall be ascertained and recorded in the field notes, information of which the following is illustrative:

(1) Chaining:

Accounts 103, 153, 104, 154, 105 and 155.

The chaining notes shall show the size, thickness, manufacturer, and type of pipe, and shall indicate by station and plusses—

Changes in size or character of pipe.

Fence crossings.

River crossings.

Structures owned by carrier adjacent to line of chaining.

Changes in general character of trench excavation.

State lines.

Junctions with other pipe lines.

Changes in protective coating.

Changes in type of joints or in kind of welding of the joints.

Beginning and end of double line of pipe, etc.

[fol. 707] Beginning of secondhand or reconditioned pipe.

Change in character of clearing and grubbing.

Prepare summaries of line pipe, line pipe fittings, and pipe line construction.

(2) Structural:

Accounts 106, 156 and 176, Buildings.

Location of structure.

Description: Kind of type of building or structure, whether stone, brick, timber or other designation.

Dimensions: Essential dimensions for computations of quantities, supplemented by necessary sketches.

Foundations: Kind and dimensions, depth and classification of excavation.

Material and workmanship: Description, grade and quality of work of carpentry, painting, etc.

Plumbing: Number and description of fixtures, piping, etc.

Heating and Ventilation: Description, number and sizes of boilers, furnaces, radiators, etc.

Lighting: Number of outlets, kind and number of fixtures, description of wiring and piping, etc.

Platforms: Kind and dimensions.

Drainage: Kind and description of sewers and appurtenances.

Landscape Accessories: Description.

Photographs of important structures.

Stacks not mounted on boilers: Show manufacturer, kind of material, height and diameter.

[fol. 708] Accounts 110 and 160, Other Station Equipment.

Location: Name of station and building or structure.

Minor Pipe Fittings and Valves, less than 2 inches in diameter when used for steam, cooling water, air, gas, crude, fuel and lube oil lines inside of buildings and between the station manifolds, pits, and tanks or reservoirs, may be inventoried as one lot and cost in place estimated in the field. A brief description of the pipe included must be given.

Pipe Fittings and Valves, 2 inches and over in diameter and pipe not inventoried as one lot must be described as to location, diameter, kind, weight, average length of joints, kind of joints, description of protective coatings, character and depth of trenching, amount and character of clearing and grubbing.

Fittings: Size, kind, material, working or test pressure, special welds, and descriptions, sketch, or plan of any special fittings.

Valves: Size, kind, manufacturer's name and number, material, working or test pressure, kind of ends.

Manifolds and Heat Exchangers: See Pipe Fittings and Valves.

Pits: Kind, material, inside dimensions, thickness of top, bottom, and sides.

Deep Well Pumps: Kind and size of pump head, sucker rods, drop line, and working barrel.

Tanks and Reservoirs. See Accounts 111 and 161.

Transformers: Capacity in K. V. A. voltage, cycle, phase, and name of manufacturer.

Refrigeration Systems: Capacity of plant, name of manufacturer, and description of pumps, compressors, etc. See Accounts 108 and 158.

Electric Lighting Plants: Size, name of manufacturer and storage capacity.

Gauges: Kind, make and working range. Diameter of dial and kind of case.

Accounts 111 and 161, Oil Tanks.

Location, kind, and capacity in barrels, dimensions, date built. State whether new or secondhand.

Show carrier's structure number.

General:

Grading: Kind and amount in cubic yards.

Clearing and grubbing: Character and amount in acres.

Fire Banks: Excavation in cubic yards.

Fire Bank Drains: Kind, size, and length.

Fire Bank Slope Protection: Show kind and amount.

Foundation: State kind and list bill of material.

[fol. 709] Steel Tanks:

Name of manufacturer and shipping weight when available.

Number of rings in shell; also, thickness of top and two lower rings; kind of joints, whether riveted, welded or bolted.

Type of roof, whether flat or cone; kind of roofing and framing.

Show height of towers or underframe and size of main members.

Stairways: Show width and length.

Wood Tanks:

For circular tanks show thickness and kind of stave material; also, number and size of hoops.

Rectangular Tanks and Underframe: List bill of material.

Roofs: See "Steel Tanks."

Fixtures and Appurtenances:

State number, size, kind, and name of manufacturer; also, state whether located on shell or roof.

Suction and Discharge Connections: Show size and detail of pipe fittings, including swing pipe, valves, winches, etc.

Accounts 112 and 162, Delivery Facilities.

State location.

Wharves and Docks:

Make a single line sketch of layout, giving necessary descriptions, measurements, and a bill of material.

State kind of material.

Show total number and average length of piling measured under cut-off. State whether piling is bearing, fender, or mooring.

Delivery Racks:

Give description; state dimensions and list bill of material.

Unloading Pits:

Show inside dimensions, thickness of top, bottom and sides.

Dredging:

State character and amount.

Pipes and Pumping Machinery:

See Accounts 103, 153, 104, 154, 107, 157, 108 and 158.

[fol. 710] (3) Mechanical:

Accounts 107 and 157; Boilers.

Location: Name or number of station.

Manufacturer and manufacture's serial number.

Carrier's number (if any has been assigned).

Type (certical or horizontal). Return tabular, water tube, scotch marine, locomotive, or other type.

Builder's rated horsepower and working steam pressure.

Diameter and length of shell or drums.

Number, diameter, and length of flues.

Kind of fuel used.

Make, kind and description of specialties, such as superheaters, stokers, oil burners, gas burners, draft regulators, low water alarms, etc.

Breeching: Dimensions and thickness of material, (make sketch if necessary), describe lining.

Metal Stacks (when supported by boiler). Diameter, height, and thickness of material.

Foundation and Settings: Where drawings are not available, prepare sketches showing general arrangement of boilers. Calculate quantities of materials for boiler settings, foundations, and excavation. Record any unusual conditions regarding soil and depth of foundation.

Accounts 108 and 158, Pumping Equipment.

Accounts 109, 159 and 179, Machine Tools and Machinery.

Location: Name or number of station.

Pumping unit number in the station: Kind, capacity, model, type and size, (in usual trade terms).

Manufacturer and manufacturer's serial number.

Carrier's number (if any has been assigned).

List and describe special attachments and materials, not regularly furnished with the piece of equipment, which affect the price.

Drive: Kind and description.

Motor and Controller: Reading on name plate.

Foundation: Cubic feet or yards of excavation, concrete, and list of other materials. Attach print of foundations for large units. Record any unusual conditions regarding soil and depth of foundation.

[fol. 711] Accounts 115, 165 and 185, Vehicles and Other Work Equipment.

Passenger Automobiles:

Manufacturer's name.

Kind—body.

Serial and engine numbers.

Model and year.

Date placed in service.

Trucks:

Same as above, except state capacity in tons and if equipped with dual wheels.

Other Work Equipment:

Manufacturer and manufacturer's serial number.

Kind, capacity, model, type and size (in usual trade terms).

List and describe special attachments, not regularly furnished with the piece of equipment, which affect the price.

(As a guide to the classification of the various items of property or their allocation to a specific account, there is attached hereto, as Appendix "A", a tabulation of the various items of property grouped under the headings of Chaining, Structural, Mechanical and Communication, and allocated to their proper account.)

(i) *Special Notes to be made by Carrier:* These notes shall contain the following:

(1) A brief description of—
(a) The topography of the country.
(b) Rainfall.
(c) Climate.
(d) Material yards used in original construction and recommended to be used under a reasonable construction program.
(e) Character of highways, roads, or trails.
(f) Proximity of railroads to pipe lines.
(g) Character and depth of trench excavation.
(h) Soil surveys, if any made by carrier.

(2) Statistical information on—
(a) Capacity of pipe line.
(b) Daily pipe line movements.
(c) Mileage of pipe on valuation section.
[fol. 712] (d) Production statistics, if available, of the various oil fields served by pipe line.
(e) Costs of construction of line, if available.
(f) Service lives of major items of property, if carrier has available records.

(3) Depletion:
(a) Estimated remaining life of oil fields served by pipe line.
(b) Water conditions in oil fields.
(c) Depth of various producing oil sands, as well as description of formations.
(d) Bottom hole pressure.
(e) Total underground reserves as of date of valuation, stating source of information.

(4) General conditions and standards of maintenance of property.

(5) Copies of contracts covering leases of pipe or joint ownership.

(6) Depreciation notes.

(7) Non-carrier property notes.

(8) Abandoned property notes.

(9) Photographs showing original construction.

[fol. 713] APPENDIX "A"

Allocation of Items of Property to Accounts

The items of property listed herewith, when consistent with use, shall be inventoried to the following accounts:

I. Chaining

Accounts 103 and 153—Line Pipe.
Line pipe.

Accounts 104 and 154—Line Pipe Fittings.
Gate valves.
Check valves.
River clamps.
Vitaulic couplings.
Dresser couplings.
Railroad and highway casing.
Ells.
Tees.
Bull plugs.
Flange unions.
Nipples.
U-Bolt clamps.
Companion flanges.
Strainers

Accounts 105 and 155—Pipe Line Construction.
Protective coating.
Clearing and grubbing.
Trenching.
Pipe line supports.

II. Structural

Accounts 106, 156, and 176—Buildings.
Cess pools and sewer lines.
Water service lines, hydrants, et cetera.
Wells. (Pumping equipment included in Other Station Equipment.)
Water storage tanks.
Platforms.
Material bins, racks, et cetera.

Inside lighting, heating and plumbing.
Station approach roads, including surfacing, clearing, grubbing and grading, and right-of-way fences.
Landscaping.

[fol. 714] Accounts 110 and 160—Other Station Equipment.
Manifolds and manifold pits.
Suction and discharge headers.
Heat exchangers and pits.
Pump suction and discharge piping.
Oil storage suction and discharge lines between pumping station or manifolds and storage tanks.
All circulatory water lines and water tanks for engine cooling.
Water cooling reservoirs and spray towers.
Deep well pumps.
Station engine fuel pipe lines and station fuel storage tanks.
Station lube oil pipe lines and tanks.
Boiler feed suction pipe lines.
Refrigeration and lighting plants.
Outside power distribution systems, transformer banks, outside lighting and outside lighting wires to main entrance lighting switch in buildings.

Accounts 111 and 161—Oil Tanks.
Oil storage facilities, such as earthen reservoirs, tanks of either metal, wood, or concrete construction.
Clearing and grubbing, grading, roofs, fire banks, fire bank drains, steam coils, swing pipes, inlet valves and outlet valves, appurtenances such as flame arresters, breathers, tank filling and suction connections, explosion hatches, et cetera.

Accounts 112 and 162—Delivery Facilities.
Wharves, including buildings.
Docks, slips, including dredging; piling, pile protection, cribs, cofferdams, and walls.
Pipe lines from pump house to delivery facilities, including appurtenances.
Boilers, engines, pumps and appurtenances at delivery facilities.
Pipe and valve pits.

Railroad tracks, driveways, fences, walkways, landscaping, et cetera.
Lighting.

Power distribution wiring, transformers, et cetera.

[fol. 715] III. Mechanical

Accounts 107 and 157—Boilers.
A complete boiler.

Accounts 108 and 158—Pumping Equipment.
Steam pumping engine with or without foundation.
Oil line pumping unit with or without foundation.
Complete booster pump with or without foundation.
Complete sump pump with or without foundation.
Power transmission system.

Accounts 109, 159 and 179—Machine Tools and Machinery.
Machine tool with or without foundation.
Motor, generator, steam engine, fire pump, feed water pump, ventilating fan, or other similar equipment.
Coal-handling system.
Ash-handling system.
Feed water heater.

Accounts 115, 165 and 185—Vehicles and Other Work Equipment.
Passenger automobile.

Truck, with or without body.
Tractor, trailer, ditcher, pole derrick, power winch, earth-boring machine.

IV. Communications

Accounts 113, 163 and 183—Communication System.
Poles.
Cross-arms.
Guys and anchors.
Aerial wires.
Small office equipment.
Aerial and submarine cable.
Underground conduits.
Underground cable.

[fol. 716] EXHIBIT 47

December 3, 1941

Memorandum

At the hearing on November 12th Mr. Thomas, Attorney of the General Council's office of the Interstate Commerce Commission requested that such documents as are available be submitted to show the ruling of the Commissioner of Internal Revenue with reference to the taxation of transportation by pipe line as explained in my testimony.

In compliance therewith there are attached:

1. A letter dated June 15, 1937 signed by D. S. Bliss, Deputy Commissioner of Internal Revenue setting forth the ruling of the Commission.

2. Copy of a letter dated September 18, 1937 concerning the claim for abatement of the assessment in the amount of $1,714.48 made pursuant to the ruling contained in the letter of June 15th and suggesting a date for an oral hearing. The oral hearing was not held and after some correspondence the matter was disposed of in accordance with a letter dated April 12, 1938.

3. A copy of a letter dated April 12, 1938 signed by D. S. Bliss, Deputy Commissioner rejecting the claim for abatement.

The tax plus $75.91 interest was paid to the Deputy Collector of Internal Revenue at Enid, Oklahoma on April 29, 1938 for which the company holds receipt No. 1978691.

Should any further information in this connection be desirable it will be supplied upon request.

Respectfully submitted, G. E. Leverton.

TREASURY DEPARTMENT

WASHINGTON

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

ADDRESS REPLY TO
COMMISSIONER OF INTERNAL REVENUE
AND REFER TO

MT:ST:WLP

JUN 15 1937

Champlin Refining Company,

Enid, Oklahoma.

Gentlemen:

Reference is made to a report dated February 26, 1937, covering your liability for the tax imposed by section 731 of the Revenue Act of 1932 on the transportation of gasoline by pipe line from Enid, Oklahoma to Hutchinson, Kansas, and Superior, Nebraska.

It is understood that the distance from Enid, Oklahoma, to Hutchinson, Kansas, is 113 miles, and from Hutchinson, Kansas, to Superior, Nebraska, 143 miles, making a total of 256 miles from Enid, Oklahoma, to Superior, Nebraska.

In reviewing the report, it is found that the charge used as the basis for tax purposes is the difference between the sale price of the gasoline at Enid and the delivery price at Hutchinson or Superior. This office does not agree that the difference represents the fair charge on which the tax should be based in the case where the transporter is the owner of the pipe line as well as the commodity transported.

A study of the charges made for the transportation of gasoline by pipe line, as disclosed by the records of this office, shows that 20 cents per barrel is the fair charge for a movement of 113 miles, and 35 cents per barrel is the fair charge for a movement of 256 miles. In view of this finding, you are advised that your tax liability for the transportation of gasoline to Hutchinson, Kansas, and Superior, Nebraska, will be computed on the basis of the rates set forth in this letter and any additional tax disclosed will be assessed, for which you will receive notice and demand in due course.

Respectfully,

D. S. Bliss,
Deputy Commissioner.

cc-Oklahoma City,Okla.

TREASURY DEPARTMENT

WASHINGTON

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

ADDRESS REPLY TO
COMMISSIONER OF INTERNAL REVENUE
AND REFER TO

MT:ST:WLP
Cl. S-55890

SEP 10 1937

Champlin Refining Company,

Enid, Oklahoma.

Gentlemen:

Reference is made to your claim for abatement of $1,714.48, tax and interest alleged to have been erroneously assessed under Section 731 of the Revenue Act of 1932. The period involved is from July 1, 1935, to December 31, 1936, inclusive.

It is contended that the rates on which the tax was assessed do not represent the fair charge for the pipe line services performed by your company.

Since this office does not concur with your contentions and in compliance with your request for an oral hearing, you are advised to fix the day and hour on which you wish to appear and in the event you are not notified to the contrary, you may assume that the time set by you is satisfactory to this office. You should call at Room 6237, Internal Revenue Building, 12th Street and Constitution Avenue, N. W., Washington, D. C., at the appointed time.

Respectfully,

Adelbert Christy

Adelbert Christy,
Acting Deputy Commissioner.

TREASURY DEPARTMENT

WASHINGTON

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

ADDRESS REPLY TO
COMMISSIONER OF INTERNAL REVENUE
AND REFER TO

APR 12 1938

MT:ST:WLP
Cl: S-55890

Champlin Refining Company,

Enid, Oklahoma.

Gentlemen:

Reference is made to your claim for abatement of $1,714.48, representing tax and interest alleged to have been erroneously assessed under section 731 of the Revenue Act of 1932. The period involved is from July 1, 1935, to December 31, 1936, inclusive.

Under dates of September 16, 1937, and October 23, 1937, you were advised of your privilege to file certain additional evidence in support of your claim. Under date of November 2, 1937, you requested ten additional days within which to advise this office of your intentions relative to this matter.

Since no further correspondence has been received from you relative to this matter, nor any additional evidence submitted in support of your contentions, it is assumed that you do not care to pursue the matter further.

Your claim is accordingly rejected in full. You should communicate with the collector of internal revenue for your district with the view of settling your outstanding liability represented by the amount claimed.

Respectfully,

Guy T. Helvering,
Commissioner.

By:

D. S. Bliss,
Deputy Commissioner.

[fol. 720] EXHIBIT 49

Champlin Refining Company

Balance Sheet — December 31, 1940

Assets			
Cash		82,192.31	
Accounts Receivable	530,623.04		
Notes Receivable	176,293.58		
		706,916.62	
Inventories		3,297,522.80*	
Stocks and Bonds		579,703.61	
Producing Leases & Royalties	4,836,476.13		
Drilling Tools	400,635.93		
Undeveloped Oil Properties	461,698.72		
		5,698,810.78	
Refining Plant		5,142,111.70**	
Tank Cars		1,285,768.83	
Gasoline Pipe Line		3,198,028.66	
Sales Stations and Equipment		4,079,458.86	
Motor Equipment		64,213.47	
General Office		276,035.66	
Other Fixed Assets		326,671.62	
Prepaid and Deferred		389,785.80	
Total Assets			25,127,220.72
Liabilities			
Accounts Payable		493,864.56	
Notes Payable		850,000.00	
Reserved for Taxes		218,984.25	
Other Accrued Liabilities		24,113.14	
Contingent Liabilities		76,176.66	
Reserve for Bad Debts	212,700.95		
Reserve for Depreciation & Depletion	13,311,281.65		
Capital Stock	2,264,285.09		
Surplus	7,675,814.42	23,464,082.11	
Total Liabilities			25,127,220.72

Note: * Inventories were valued at cost or market whichever was lower and included: (A) 35,301,015 gallons of refined products having a total value of $821,063.13 in storage at the Enid Refinery; (B) 20,953,278 gallons of refined products having a total value of $690,383.44 in storage at or in transit to the 3 pipe line terminals; (C) 71,254 gallons of refined products having a total value of $8,646.27 in warehouses at the 3 pipe line terminals after transportation thereto by rail or truck; (D) 2,220,294 gallons of refined products having a total value of $439,215.14 in bulk plants and retail stations; (E) 1,071,045 barrels or crude oil having a total value of $1,152,601.26; and (F) drums, cans, containers and warehouse supplies of a total value of $185,613.56.

** Refinery investment totaling $5,142,111.70 included the cost of: (G) a complete refinery having a total capacity of 16,000 barrels (42 gallons) of crude oil daily; (H) crude oil storage tanks having a total capacity of 1,395,000 barrels; (I) storage tanks for refined products of a total capacity of 1,313,000 barrels; and (J) loading racks capable of accommodating 102 tank cars and 6 transport trucks at one time, all situated at the Enid Refinery.

*** The investments in producing leases, undeveloped leases, tank cars, gasoline (or products) pipe line, sales stations, and motor equipment were explained in the testimony of G. E. Leverton (Rec. pages 11-13) and are not again explained here.

I hereby certify that the foregoing balance sheet conforms to the books and records as of December 31, 1940.

.....

Secretary-Treasurer

[fol. 721] EXHIBIT 50

Valuation 1980

At a Session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 17th day of March, A. D. 1941.

Clyde B. Aitchison, Walter M. W. Splawn, J. Haden Alldredge, Commissioners.

Recommendation made by Director Lewis in memorandum of Feb. 7, 1941, to Commissioner Miller, that the bureau of valuation proceed against either the Champlin Refining Company or the Standard Oil Company of Indiana in such manner as will bring before the Commission the question of jurisdiction under section 19a for the purposes of a test case, approved, Commissioner Splawn voting in the negative.

[fol. 722] INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Champlin Refining Company, Valuation of Pipe Line

Submitted May 20, 1942. Decided Dec. 14, 1942

The Champlin Refining Company found to be engaged in the transportation of petroleum products, by pipe line in interstate commerce, and subject to the provisions of the Interstate Commerce Act.

Harry O. Glasser and Samuel H. Horne for petitioner.

REPORT OF THE COMMISSION

Division 2, Commissioners Aitchison, Splawn, and Alldredge

By DIVISION 2:

On May 15, 1941, we served upon the Champlin Refining Company, hereinafter called the Champlin, copies of valuation orders Nos. 26 and 27, together with instructions and

sample notes pertaining to the preparation and filing by common carriers by pipe line of information necessary for our use in the valuation of their pipe-line properties. On July 18, 1941, the Champlin filed a report in purported compliance with these valuation orders. On July 22, 1941, that report was returned to the Champlin with the advise that such a report could not be considered as in compliance with the valuation orders, and additional copies of valuation orders Nos. 26 and 27 were forwarded to the Champlin. Subsequently, the Champlin filed a petition which, as later amended, alleges, among other things, that the petitioner is not a common carrier and is not engaged in transportation within the meaning of the Interstate Commerce Act and asks that its status be determined. A hearing was held on the petition, briefs have been filed, and oral argument heard.

The Champlin is a corporation of the State of New Mexico authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell, and deal in the refined products of petroleum. As of the date of the hearing, it owned the various properties enumerated in footnote 1.[1] The pipe line which the Champlin

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[1] (1) Approximately 149 oil wells on 53 leases in Oklahome; 45 wells on 13 leases in Kansas, and 52 wells on 10 leases in Texas; (2) approximately 75,000 acres of undeveloped leases situated in Oklahoma, Kansas, Texas, New Mexico, Alabama, and Illinois; (3) an oil refinery at Enid, Okla., which processes approximately 4½ million barrels of crude oil annually, producing a complete line of refined oil products; (4) all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of gathering lines used principally to transport the crude produced or purchased by the company from oil leases in Oklahoma to the Enid refinery; (5) 723 tank cars used to transport the products of the refinery to company bulk plants or to jobbers located in Oklahoma, Kansas, Colorado, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Wisconsin, Iowa, Illinois, Missouri, Texas, and other States; (6) approximately 316 filling stations and 248 gasoline and oil bulk plants; (7) the products pipe line which is the subject of this report; (8) 5 motortrucks used to transport products

[fol. 723] owns and operates is a 516-mile gasoline pipeline system, consisting of welded 6-inch pipe extending from Enid, Okla., to Champlin, near Rock Rapids, Iowa. In connection with the pipe line, the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kans., Superior, Nebr., and Rock Rapids. The construction of the portion of the pipe line from Enid through Hutchinson to Superior, 256 miles, and of the terminal facilities at Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at the last-named point were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

For some years prior to 1935, the business of the Champlin showed a steady decline, because the construction of refineries in areas near former markets and the operation of pipe lines, barge lines, and transport trucks provided sources of supply near many customers, all of which was destructive of trade connections of the Champlin in the territory thus affected. The construction of the pipe line resulted in an upward trend in business of the Champlin so that by 1940 the company had reached a volume of business equal to the peak previously enjoyed. That the Champlin meets keen competition in the territory served

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from storage at Rock Rapids, Iowa, to points in that and other States, 3 trucks used to transport lubricating oil from the Enid, Okla., refinery to the warehouses at the Hutchinson, Kans., Superior, Nebr., and Rock Rapids, Iowa, pipe-line terminals, as well as Lincoln and Grand Island in Nebraska, and Denver in Colorado and various points in Kansas, 18 trucks used in the operation of the products pipe line and the operation and development of oil leases in Oklahoma, Kansas, and Texas, most of which occasionally transport materials for construction, operation, and maintenance from one State to another; and (9) various other equipment used to promote the producing, purchasing, and refining of crude oil and the marketing of the products thereof.

is indicated by the fact that for the first 6 months of 1941 the total sales of the Champlin in the States of Colorado, Kansas, Nebraska, Iowa, Minnesota, and South Dakota, which are served by the pipe line, equaled 3.5 percent of the whole business of the petroleum industry in those States. This comparison is based on information furnished to the Champlin by the tax-collection officials of the respective States.

Construction of the portion of the pipe line from Enid to Superior was undertaken by the Cimarron Valley Pipe Line Company, hereinafter referred to as the Cimarron [fol. 724] Valley, which was then a common carrier operating wholly in the State of Oklahoma and a wholly owned subsidiary of the Champlin. The original purpose was to construct and operate a common-carrier pipe line, and a certificate to that effect was issued to the Cimarron Valley by the State of Kansas. In connection with the acquisition of right-of-way for this construction, the Cimarron Valley had instituted four condemnation suits against seven individuals in separate district courts in the State of Kansas. When the line was nearing completion but before it was put into operation, a change in plans was decided upon which would eliminate the Cimarron Valley from operation outside of the State of Oklahoma in order that the Champlin might complete construction of the line and operate it as a private-products line without assuming any of the burdens of a common carrier. On June 10, 1935, the Cimarron Valley executed a bill of sale to the Champlin and made assignment of all rights-of-way that had been acquired in the construction of the property transferred to the Champlin. The four condemnation suits were dismissed, and satisfactory settlements made with the contesting land owners. Since that time, the Cimarron Valley has had nothing to do with the further construction or operation of the Champlin.

The crude oil from which the products transported by the Champlin are produced is all originated in the State of Oklahoma and transported to the refinery at Enid by the Cimarron Valley. All of the petroleum products transported through the line are owned by the Champlin. The products are transported beyond the terminals either by rail or by common- or contract-carrier trucks to dealers and distributors. The Champlin operates five 3,750-gallon capacity transport trucks from the Rock Rapids terminals

by which deliveries are made to company-owned outlets in north central Iowa and southern Minnesota, and to jobbers and dealers in the same territory. Other transport trucks, not owned, are employed by the Champlin to haul refined products from the refinery and the 3 terminals of the pipe line to the 248 bulk plants owned. From these bulk plants, local dealers and consumers are served by tank wagons owned and operated by the Champlin. The Champlin operates approximately 316 retail filling stations in the territory served by the pipe line. The products are marketed at the terminals, sometimes by contract running for a definite period, at a delivered price which in addition to the f.o.b. charge at the Enid refinery includes a charge, called a differential, fixed at a sum which enables the Champlin to deliver these products at the pipe-line terminal at a price which, added to the transportation costs beyond the terminal, equals the costs at the jobber's place of business of like products sold by competitors of the Champlin in the territory served. In other words, the so-called differential is adjusted so that the through charge [fol. 725] to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe-line terminal. Numerous adjustments have been made in the differentials from time to time as developments in the competitive situation made such changes necessary or expedient.

In disposing of the petroleum products produced by it at its refinery at Enid, the Champlin uses two types of sales; one is known as the spot-market or date-of-shipment sale, and the other, or contract sale, is based on yearly contracts with its customers. The spot price of the product at Enid is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices as shown in the issue of the Thursday preceding date of shipment. These prices are made effective at 7 a. m. Friday morning and remain in force until the next succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The contract sales cover sales made to jobbers to cover their anticipated requirements for a specified or definite length of time. These

contracts are made in writing, and the record contains copies of the various forms of such contracts and accompanying papers necessary to show a complete transaction. Other sales are made to competing refiners and to brokers, and in these instances the contracts are the same as those made with the jobbers, except that the base or "Group 3" price is reduced so that the refiners and brokers are enabled to retain a commission and still sell the product at the delivered price prevailing in the competitive market.

The practical working out of the sales methods utilized by the Champlin may be described by the following facts presented for the record. On January 18, 1941, the Champlin entered into a contract with the Farmers Union Co-op. Supply Company, of Beatrice, Nebr., calling for the delivery by the Champlin of a maximum of 765,000 gallons of petroleum products named in the contract, at prices therein agreed upon, during the period of 1 year beginning February 4, 1941. A shipment of a tank-car load of gasoline from the Superior terminal of the Champlin is indicative of the carrying out of this contract. This car contained 8,110 gallons of gasoline weighing 53,526 pounds and moved from Superior, October 11, 1941, destined to Beatrice, routed C. B. & Q. to Fairbury, Nebr., and C. R. I. & P. to destination, at a rate of 10.5 cents per 100 pounds, indicating a charge of $56.21 for the rail portion of the transportation, to be paid by the consignee direct to the railroads. The invoice of the Champlin to the consignee contains the following charges: $496.74, the cost at Enid of [fol. 726] 8,110 gallons of the particular type of gasoline at the base price of $0.06125 per gallon; $121.65 Federal tax at the rate of 1.5 cents per gallon; and $81.10, the so-called differential, which in this instance equaled 1 cent per gallon. The total charge made by the Champlin for this carload of gasoline was $699.49. The item of $81.10 was described by a witness for the Champlin as representing the difference between the through railroad freight rate from Enid to Beatrice and the rail charge from Superior to Beatrice and was the total charge made by the Champlin for transporting this gasoline from Enid, including handling and all other items that go into the movement from the refinery to the pipe-line terminal at Superior.

Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never

transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank-car racks and is not directly from the pipe line in any instance; no tariffs have been filed with this Commission or with any State commission or regulatory body; and the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line. Upon these facts, the Champlin contends that its products line is a private pipe line devoted to its own use, that it is not a common carrier as defined in section 1 of the Interstate Commerce Act, and that the use to which the pipe line is subjected by petitioner is not impressed with a public interest in any manner whatsoever. The evidence of record as outlined herein shows that the Champlin is a fully integrated oil company owning and operating, either directly or through its subsidiary the Cimarron Valley, every facility necessary for the production and the transportation of crude oil by pipe line, the refining of such crude oil, the transportation by pipe line of the products of its refinery, and the distribution thereof either through jobbers or directly to the consuming public.

In *Valvoline Oil Co. Petition in Valuation of Pipe Lines*, 47 Val. Rep. 534, division 1 described the legislative development of our jurisdiction over transportation of oil by pipe lines as follows at pages 535-536:

> Persons or corporations engaged in the interstate transportation of oil by means of pipe lines were first brought within our jurisdiction by the Hepburn Act of June 29, 1906. By that act the provisions of section 1 of the Act to Regulate Commerce were made applicable to "any corporation or any person or persons engaged in the transportation of oil or other commodity except water and except natural or artificial gas, by means of pipe lines, [fol. 727] or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act." Except for minor revisions in the language, the provisions affecting pipe-line com-

panies remain unchanged by subsequent amendments. Section 1 of the act, as now in effect, reads in part as follows:

(1) That the provisions of this part [Part I] shall supply to common carriers engaged in——

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * * from one State * * * to any other State * * *.

(3) The term "common carrier" as used in this part shall include all pipe line companies; * * *.

The same language is continued in the act as now in effect. In *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, the Supreme Court said "In the present act there is a change of language, but we perceive none in meaning." In that decision, the Supreme Court affirmed on appeal a final decree of a three-judge district court for the Western District of Pennsylvania, dismissing a petition to enjoin and annul an order of this Commission made after determination by us that the Valvoline Oil Company is engaged in the transportation of oil by pipe line in interstate commerce and that it is a common carrier subject to the provisions of the Interstate Commerce Act.

Following the passage of the Hepburn Act and in view of conditions then existing, we instituted an investigation on our own motion into the rates, classifications, regulations, and practices of pipe-line companies. *In the Matter of Pipe Lines*, 24 I. C. C. 1. After full investigation, we concluded that it was clearly the intention of Congress to convert all interstate pipe lines into common carriers. Consequently, certain pipe-line companies were ordered to file schedules of rates and charges for the interstate transportation of oil, in compliance with the provisions of the act. Some of these companies brought suit in the Commerce Court to set aside and annul our order on the ground, among others, that Congress had exceeded its constitutional powers in declaring persons or corporations using pipe lines in transporting their own oil to be common carriers. The Commerce Court held the statute to be unconstitutional in that it applied to every pipe line that crossed a State bound-

ary and issued a preliminary injunction. *Prairie Oil & Gas Co.* v. *United States,* 204 Fed. Rep 798. Upon appeal to the Supreme Court of the United States, the decision of the Commerce Court was reversed except as to the Uncle Sam Oil Company. *Pipe Line Cases,* 234 U. S. 548..

Counsel for the Champlin stated at the argument herein that he would concede that Congress has the power to make any kind of a pipe line, that crosses a State line, a common carrier. Arguments were advanced, however, to support the view that Congress has not yet acted to so classify privately operated products pipe lines such as that owned [fol. 728] and operated by the Champlin. One basis for this position is the use of the word "oil" in section 1 (1) (b) of the act, quoted above, which the Champlin interprets to mean crude oil, and not kerosene or gasoline, because at the time the statute was passed and at the time the decisions (in *Pipe Line Cases, supra*) were written there was no such thing as a kerosene pipe line, nor was there any such idea as transporting gasoline by a privately owned pipe line. This argument fails to give proper significance to the words "or other commodity," following "oil" in the pararaph quoted. These words would seem to be all inclusive of commodities that may be transported by pipe line other than water and natural or artificial gas, which are specifically excluded. That such was the intent of Congress is borne out by the fact that, although the interstate Commerce Act has been amended several times in recent years, this language in section 1 has remained unchanged, though the Congress must be presumed to have been aware of the changes in the petroleum industry which resulted in the transportation of petroleum products by pipe line.

The Champlin contends that it is not subject to the act because it is not a pipe-line company; that to be a pipe-line company the operation of the pipe line must constitute the principal portion of its business; and that the operation of its products line is incidental to its other operations and simply a means of marketing its refined products. In other words, the Champlin takes the position that it is operating a privately owned products line carrying its own product from one storage tank to another storage tank. In this connection we refer again to the quotation above from the decision of the Supreme Court in *Valvoline Oil Co.* v. *United States, supra*: The charter of the Champlin authorizes it to transport petroleum and its products, and, by performing

that transportation by means of a pipe line that crosses State lines, it becomes a pipe-line company within the meaning of the act.

The Champlin stresses the fact that it transports through its pipe line only its own products, and argues therefore that it is operating a private pipe line which comes within the principal of the Uncle Sam Oil Company as stated in *Pipe Line Cases, supra.* The Supreme Court there said:

When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery *for its own use, and that is all*, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end. [Emphasis supplied.]

Here the products are not being transported for the Champlin's own use. The products are transported for sale, and the sales are consummated by contract or by "spot" orders and delivery made at either of the terminals out of products already transported to those points and [fol. 729] stored there for that purpose. In *Pipe Line Cases, supra,* the Supreme Court said:

That the transportation is commerce among the States, we think clear. That conception cannot be made wholly dependent upon technical questions of title, and the fact that the oils transported belonged to the owner of the pipe line is not conclusive against the transportation being such commerce.

The conclusion that the transportation here considered is interstate commerce is strengthened by the decision of the Supreme Court in *Federal Power. Comm.* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, decided March 16, 1942, where the Court said:

The sale of natural gas originating in one state and its transportation and delivery to distributors in any other state constitutes interstate commerce, which is subject to regulation by Congress.

And in *Valvoline Oil Co.* v. *United States, supra,* the Court said:

Whether the oil so owned and transported was ultimately used by the carrier in its own operations or sold to others

was in this connection immaterial. Certainly one would find a public interest in the sole means of transporting this commodity from thousands of wells for thousands of producers.

Here we have the reverse of the situation in the *Valvoline Oil Co. case, supra,* in that the transportation is from one producer to thousands of consumers, but the principles of interstate commerce and the public interest are in all essentials the same. The Champlin relies upon certain language of the Supreme Court in *Producers Transp. Co.* v. *Railroad Comm. of California,* 251 U. S. 228, as applying to the pipe line it operates. We considered the same language in *Valvoline Oil Co. Petition in Valuation of Pipe Lines, supra,* where we said at page 539:

The constitutionality of the statute and the validity of the order in that case were upheld. The decision does not differ in principle from *The Pipe Line Cases.* Carriage for the public was the governing factor in both cases.

Here, also, carriage for the public is the governing factor, and counsel for the Champlin have advanced no argument to overcome the fact that the pipe line which it operates is utilized by it for the transportation in interstate commerce of petroleum products, for distribution to the general public in the territory which it serves. Such pipe lines are made common carriers by the Interstate Commerce Act.

We find that the Champlin Refining Company is engaged in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act. It should therefore comply with our valuation orders which have been served upon it and furnish promptly the information called for therein. No further order is required at this time.

Endorsed: Filed in District Court on Oct. 3, 1944.

[fol. 730] BEFORE INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Valuation of Pipe Line of Champlin Refining Company

ORDER REOPENING PROCEEDING—April 5, 1943

Upon further consideration of the record in the above entitled proceeding, and upon consideration of petition of Champlin Refining Company for rehearing, reargument and reconsideration:

It is Ordered, That this proceeding be, and it is hereby, reopened for reargument and reconsideration, and the petition denied as to rehearing.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 731] INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Champlin Refining Company, Valuation of Pipe Line

[fol. 732] Valuation Docket No. 1267

Champlin Refining Company, Valuation of Pipe Line

Submitted June 1, 1943. Decided June 12, 1944

Upon further consideration finding in original report, 49 Val. Rep. 463, that the Champlin Refining Company is engaged in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act, affirmed.

Additional appearance: J. V. Norman for petitioner.

REPORT OF THE COMMISSION ON REARGUMENT

By the COMMISSION:

In the original report in this proceeding, 49 Val. Rep. 463, division 2 found that the Champlin Refining Company, hereinafter generally referred to as the Champlin, is engaged

in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act. No order was entered, but the Champlin was directed to comply with orders under section 19a of the act, previously served upon it, and to furnish promptly the information called for therein. Such information is required for our use in valuing the properties of common carriers by pipe line. The Champlin thereupon filed a petition for rehearing, reargument, and reconsideration. The petition was granted, except as to rehearing, and reargument was heard.

There is no dispute as to the statements of fact in the original report, but they will be repeated here in sufficient detail to furnish a clear understanding of the jurisdictional question which was the basis of the reargument. It is the position of the Champlin that, granting the facts to be as stated, it is not a pipe-line company as that term is defined in the Interstate Commerce Act; it is not engaged, in the operation of its pipe line, in interstate commerce as that term is defined in the Interstate Commerce Act; and it is not a common carrier.

The Champlin is a corporation of the State of New Mexico, authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell, and deal in the refined products of petroleum. The pipe line which the Champlin owns and operates is a 516-mile [fol. 733] gasoline pipe-line system consisting of welded 6-inch pipe extending from Enid, Okla., to Rock Rapids, Iowa. In connection with the pipe line, the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kans., Superior, Nebr., and Rock Rapids. The construction of the portion of the pipe line from Enid through Hutchinson to Superior, 256 miles, and the terminal facilities at Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at Rock Rapids were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

The Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, oil trucks, and other equipment, all more specifically described and enumerated in the original report. It also owns all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid.

In disposing of the petroleum products produced by it at its refinery at Enid, the Champlin uses two types of sales; one is known as the spot-market or date-of-shipment sale, the other, or contract sale, is based on yearly contracts with its customers. The spot, or f. o. b., price of the product at Enid is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices as shown in the issue of the Thursday preceding date of shipment. These prices are made effective at 7 a. m. Friday morning and remain in force until the next succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The delivered price includes, in addition to the spot or f. o. b. charge at the Enid refinery, a charge called a differential which is adjusted so that the through charge to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe-line terminal.

The contract sales are described in the original report by the following typical example:

On January 18, 1941, the Champlin entered into a contract with the Farmers Union Co-op. Supply Company of Beatrice, Nebr., calling for the delivery by the Champlin of a maximum of 765,000 gallons of petroleum products named [fol. 734] in the contract, at prices therein agreed upon, during the period of 1 year beginning February 4, 1941. A shipment of a tank-car load of gasoline from the Superior terminal of the Champlin is indicative of the carrying out of this contract. This car contained 8,110 gallons of gasoline weighing 53,526 pounds and moved from Superior, October 11, 1941, destined to Beatrice, routed C. B. & Q. to Fairbury,

Nebr., and C. R. I. & P. to destination, at a rate of 10.5 cents per 100 pounds, indicating a charge of $56.21 for the rail portion of the transportation, to be paid by the consignee direct to the railroads. The invoice of the Champlin to the consignee contains the following charges: $496.74, the cost at Enid of 8,110 gallons of the particular type of gasoline at the base price of $0.06125 per gallon; $121.65 Federal tax at the rate of 1.5 cents per gallon; and $81.10, the so-called differential, which in this instance equaled 1 cent per gallon. The total charge made by the Champlin for this carload of gasoline was $699.49. The item of $81.10 wa sdescribed by a witness for the Champlin as representing the difference between the through railroad freight rate from Enid to Beatrice and the rail charge from Superior to Beatrice and was the total charge made by the Champlin for transporting this gasoline from Enid, including handling and all other items that go into the movement from the refinery to the pipe-line terminal at Superior.

The facts were summarized in the original report in the following language:

Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank-car racks and is not delivered directly from the pipe line in any instance; no tariffs have been filed with this Commission or with any State commission or regulatory body; and the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line.

Considering first the status of the Champlin as a pipe-line company. It is clearly shown by the record that the Champlin is a fully integrated oil company owning and operating, either directly or through its subsidiary the Cimarron Valley Pipe Line Company, every facility necessary for the production and the transportation of crude oil by pipe line, the refining of such crude oil, the transportation by pipe line of the products of its refinery, and the dis-

tribution of the products through jobbers, or directly, to the consuming public.

The Champlin bases its contention that it is not a pipe-line company on the theory that such a company is one whose principal business is the operation of a pipe line. The analogy is drawn that an express company or a sleeping-car company is recognized as being principally engaged in the operation of either express cars or sleeping cars. Also that as the Champlin operates a great many trucks it could as well be called a truck company. The limitation which the [fol. 735] Champlin would place upon the phrase "pipe-line company" is dispelled by general usage of the word "company" and by the evident purport of the language of the Interstate Commerce Act as interpreted by the Supreme Court. In *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, in considering the applicability of the act to the pipe-line department of the Valvoline Oil Co., which uses its pipe line to transport crude oil to its refinery, the Supreme Court said "There is no controversy over whether appellant is an interstate pipe line company. Obviously it is."

Webster's New International Dictionary defines "Company" as "an association of persons for a joint purpose or performance, especially for carrying on a commercial or industrial enterprise or business." In a fully integrated oil business, such as that which the Champlin operates, the association of persons which constitutes the organization is engaged in a variety of enterprises, and the word "company" as applied to it has many meanings. It is unquestionably an oil company as it deals in nothing but petroleum oil and the products thereof. Its corporate title stamps it as a refining company. Its charter authorizes the Champlin to transport petroleum oil and petroleum products, and it has elected to perform the major part of such transportation of petroleum products by the pipe line which is the subject of this proceeding. As this pipe line crosses several State lines and carries petroleum products moving in interstate commerce, as more fully discussed hereinafter, the Champlin is a pipe-line company within the meaning of the Interstate Commerce Act.

The Champlin would have us hold that in the operation of its pipe line it is not engaged in interstate commerce, because the products transported through the pipe lines are owned by the Champlin and that this operation comes within the principle of the Uncle Sam Oil Company, as stated in

Pipe Line Cases, 234 U. S. 548. The Supreme Court there said:

> That the transportation is commerce among the States we think clear. That conception cannot be made wholly dependent upon technical questions of title, and the fact the oils transported belonged to the owner of the pipe line is not conclusive against the transportation being such commerce.

And in *Federal Power Comm.* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, the Supreme Court said:

> The sale of natural gas originating in one state and its transportation and delivery to distributors in any other state constitutes interstate commerce, which is subject to regulation by Congress.

In distinguishing the status of the Uncle Sam Oil Company, the Supreme Court, in *Pipe Line Cases, supra*, used this language:

> When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery [fol. 736] *for its own use, and that is all*, we do not regard it as falling within the description of the act, *the transportation being merely an incident to use at the end.* [Italics supplied.]

The Champlin does not in any way come within the principle there announced. There is no contention that the Champlin transports the products of its refinery for its own use. The products are made for sale to the general public in many States. In the case of contract sales, of which the example hereinbefore given is typical, the interstate destination is known when the product leaves the refinery at Enid, and the transportation through the pipe line is an incident to service for the general public. In the case of "spot" sales, the same service has been performed before the actual sale is made at the pipe-line terminals.

The Champlin takes the position that the question of whether or not the transportation here involved is transportation within the meaning of the act is conclusively determined by the decision of the Supreme Court in *Pennsylvania R. Co.* v. *Public Utilities Comm. of Ohio*, 298 U. S. 170, called herein the *Negley case*. The facts upon which that decision was based were, briefly, these: The Pittsburgh Coal Company transported coal from its mines in Pennsyl-

vania in its own barges, towed by its own tug boats, over the Monongahela and Ohio Rivers to Smith's Ferry, Pa. There the coal was transferred to rail cars owned by the coal company and taken over its own railroad to Negley, Ohio, where it was washed, freed from foreign matter, and broken up or assorted into desired sizes. As the Supreme Court said, "Then for the first time it is ready for shipment to fill specific orders, * * *." The coal which was considered in that proceeding was shipped by common-carrier railroads from Negley to Youngstown, Ohio.

The issue in the *Negley case* was stated by the Supreme Court as follows:

The question for us here is not whether the movement of the coal is to be classified as commerce or even as commerce between states. The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a federal commission. The Interstate Commerce Act (49 U. S. C. § 1, et seq.) is aimed at common carriers exclusively (§ 1 (1); (3)), and not even at all these.

The Court further said that in determining the application of the Interstate Commerce Act to interstate commerce "Transportation begins for that purpose, if not for others, when the merchandise has been placed in the possession of a carrier." The act defines the word "carrier" as used therein to mean "common carrier."

The Court held in the *Negley case* as follows:

The only transportation of this coal by a common carrier of merchandise either by railroad or by water was intra- [fol. 737] state transportation in Ohio between Negley and Youngstown. The transportation between Pennsylvania and Ohio was by the owner, who was not a common carrier, but furnished implements of carriage for its own use exclusively.

In the present proceeding the preliminary transportation comparable to that in the *Negley case* up to Negley, is that performed by the Cimarron Valley Pipe Line Company in bringing the crude petroleum to the refinery at Enid. Then, after the crude oil is refined, for the first time the products are ready for shipment to fill specific orders. Then these products are placed in the possession of a carrier by pipe line, not for delivery in the same State as in the *Negley case*,

but for carriage over several State lines for delivery in numerous States. In *Pipe Line Cases, supra,* and in *Valvoline Oil Co.* v. *United States, supra,* similar transportation of crude oil by pipe line was held to be interstate commerce. Also it is a form of interstate commerce which Congress has subjected to regulation by this Commission, as more fully discussed hereinafter.

Viewing the facts presented in this record, in the light of the expressions of the Supreme Court, it is clear that the transportation of petroleum products by the Champlin by means of the pipe line here considered is interstate commerce.

With regard to its common-carrier status, the Champlin takes the position that the Interstate Commerce Act, as interpreted by the decisions of the Supreme Court, makes common carriers only of those pipe lines that are in substance common carriers. Accepting as sound the statement in the original report that "carriage for the public is the governing factor," the Champlin contends that the carriage here under consideration is not such carriage.

By the Hepburn Act of June 29, 1906, the provisions of section 1 of the Act to Regulate Commerce were made applicable to—

any corporation or any person or persons engaged in the transportation of oil or other commodity except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act.

Except for minor revisions in the language, the provisions affecting pipe-line companies remain unchanged by subsequent amendments. Section 1 of the act, as now in effect, reads in part as follows:

(1) That the provisions of this part [Part I] shall apply to common carriers engaged in—

* * * * * * *

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * * from one State * * * to any other State * * *.

[fol. 738] (3) (a) The term "common carrier" as used in this part hall include all pipe-line companies; • • •.

Giving consideration to the Hepburn amendment of the act in *Pipe Line Cases, supra,* the Supreme Court said with relation to the pipe-line carriers there considered:

As applied to them, while the amendment does not compel them to continue in operation, it does require them not to continue except as common carriers.

And in the same decision the Court said:

So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid.

More than 20 years had passed after that decision was rendered before the pipe line of the Champlin was constructed. These conclusions of the Supreme Court were set out in the decision cited after the Court had in the same decision construed the language of the statute as amended by the Hepburn Act to constitute "an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as" common carriers. And as stated before herein, the Supreme Court has held that a subsequent change in language has not changed the meaning of the act.

There is little ground for the argument that the carriage by pipe line here considered is not carriage for the public. In *Valvoline Oil Co. v. United States, supra,* comparing the Uncle Sam Oil Company with Valvoline, the Supreme Court said "Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline." In other words, carriage for the public distinguished the Valvoline from the Uncl- Sam Oil Company which carried only for itself. In the case of the Champlin, the act of carriage precedes the distribution to the public of the product carried. The record is clear that the Champlin is willing to sell its products to any part of the consuming public that can avail itself of the Champlin's facilities, provided the purchaser will agree to pay to the Champlin, under contract or spot sales, the so-called differential as compensation to the Champlin for transporting the product from Enid through the pipe line to the respective terminals. As previously described, the differential is the difference between the through railroad freight

rate from Enid to final destination and the rail charge from the pipe-line terminal to such destination. The differential is added to the cost of the product in the sale of all products transported through the pipe line. The carriage performed by the Champlin by means of the pipe line here considered is in all of its aspects carriage for the public.

[fol. 739] We find that the Champlin is a common carrier of refined petroleum products by pipe line and that it is subject to the provisions of the Interstate Commerce Act. The findings of division 2 in the original report are accordingly affirmed.

An order will be entered directing the Champlin to comply with the provisions of our valuation orders Nos. 26 and 27 previously served upon it in connection with proceedings under section 19a of the act, within 90 days from the date of service hereof. The date of valuation is hereby fixed as of December 31, 1943.

Chairman Patterson and Commissioner Porter dissent.

49 Val. Rep.

[fol. 740] BEFORE INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Valuation of Pipe Line of Champlin Refining Company

ORDER—June 12, 1944

It appearing, That the Champlin Refining Company was duly served with copies of Valuation Orders Nos. 26 and 27, issued by this Commission, requiring the filing within a time specified of certain maps and information required for the valuation of its pipe-line property under section 19a of the Interstate Commerce Act:

It further appearing, That the Commission has made and filed a report finding that the Champlin Refining Company is a common carrier of refined petroleum products by pipe line and subject to the provisions of the Interstate Commerce Act, which said report is hereby referred to and made a part hereof;

It is ordered, That the said Champlin Refining Company comply with the provisions of said Valuation Orders Nos. 26 and 27, within 90 days from the date of service hereof and as of December 31, 1943.

By the Commission. W. P. Bartel, Secretary. (Seal.)

[fols. 741-743] BEFORE INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1267

Champlin Refining Company

ORDER DENYING REHEARING—July 26, 1944

Upon further consideration of the record in the above-entitled proceeding, and of petition of the Champlin Refining Company for rehearing and vacation of report and order of the Commision on reargument therein;

It is ordered, That the petition be, and it is hereby, denied.

By the Commission: W. P. Bartel, Secretary. (Seal.)

[fol. 744] IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559—Civil

[Title omitted]

PETITION FOR REHEARING—Filed April 12, 1945

Comes Now, The Champlin Refining Company, petitioner, and complaining of the failure of the court,

(*a*) to notice in the majority opinion of the court what it believes are controlling decisions of the Supreme Court of the United States in this litigation, *viz: Pennsylvania R. Co.* v. *Public Utilities Commission*, 298 U. S. 170, 80 L. ed. 1130; *Producers Transportation Co.* v. *R. R. Commission of California*, 251 U. S. 228, 64 L. ed. 239; *Atlantic Coast Line* v. *Standard Oil Co.*, 275 U. S. 257, 72 L. ed. 270; *General Oil Co.* v. *Crain*, 209 U. S. 211, 52 L. ed. 754, and *Williams* v. *Standard Oil Co.*, 278 U. S. 239, 73 L. ed. 207;

(*b*) for the further erroneous interpretation of the effect to be given the exception granted by Mr. Justice Holmes to the Uncle Sam Oil Company in the *Pipe Line Cases*, 234 U. S. 548, 58 L. ed. 1459;

(*c*) for erroneous interpretation of the uncontroverted facts in said litigation,

[fol. 745] and,

(*d*) erroneous conclusions of law generally, all of which will be noted, *infra*, herein;

the petitioner respectfully prays that it be granted a rehearing upon the issues so erroneously determined adversely to it.

In support of this petition for rehearing, the petitioner says:

I

That error is made in the conclusion expressed in the last sentence at the bottom of page 4 of the typewritten memoranda of Judge Chandler's majority opinion, as to a probable basis for Mr. Justice Holmes' exception to the

Uncle Sam Company in the *Pipe Line Cases, supra*, as follows:

> "The court also undoubtedly took into consideration the fact that the company, having entered the field as a purely private pipe line prior to the passage of the 1906 amendment and having vested rights, arbitrary classification of such line as a common carrier, would be unconstitutional."

Such conclusion is wholly unsupported by and is unwarranted within the text of Mr. Justice Holmes' decision.

Mr. Justice Holmes, in disposing of the Uncle Sam Oil Company, merely said:

> "• • • • • • •
>
> "There remains to be considered only the Uncle Sam Oil Company. This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company [fol. 746] is simply drawing oil from its own wells across a state line to its own refinery, for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end. In that case the decree will be affirmed. In the others the decree will be reversed."

It is obvious that the opinion here attempts to read something into the context of Mr. Justice Holmes' opinion that is neither there, nor existent as a basis for what Mr. Justice Holmes said.

In the *Valvoline* case, 308 U. S. 141, 84 L. ed. 150, Mr. Justice Reed, having occasion to notice the Uncle Sam Oil Company exception to the rule announced against the major oil companies, in the *Pipe Line Cases, supra*, adversely disposed of the Valvoline contention as to its right to have the exception granted the Uncle Sam Oil Company allowed to

it in its operation of its crude oil gathering system lines, by saying:

"* * * * * * *

"The appellant relies upon the *Pipe Line Cases* to show that the present act does not cover a pipe line transporting oil for its own refining purposes only. The discussion referred to is that concerning the Uncle Sam Oil Company. But that company's pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.' This was held not to be transportation under the act. Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline.

"* * * * * * *"

Nothing further was said in the *Valvoline* opinion, *supra*, with reference to the Uncle Sam Oil Company, or its operations, and the language there employed by Mr. Justice Reed was a recognition of approval of the language employed by Mr. Justice Holmes in the *Pipe Line Cases, supra*, in dealing [fol. 747] with the Uncle Sam Oil Company's interstate pipe line operations.

See, also, opinion of Circuit Court of Appeals for the Sixth Circuit, in *Pennsylvania R. Co.* v. *Pittsburgh L. & W. R. Co., et al.*, 83 F. (2d) 861, for its interpretation of the *Uncle Sam Oil Company* decision.

A photo copy of the transcript of the record, *United States of America, et al.*, v. *Uncle Sam Oil Company*, No. 507, October Term 1913, is submitted herewith as a part of this petition and for identification, marked Exhibit "A," together with like copy of the brief filed by the Uncle Sam Oil Company in the Supreme Court of the United States in that case on October 7, 1913, which is likewise submitted herewith as a further part of this petition for rehearing and for identification, marked Exhibit "B."

A photo copy of the brief for the United States in the *Pipe Line Cases*, (including the *Uncle Sam Case* No. 507, October Term 1913) is likewise submitted herewith as a further part of this petition for rehearing, and for identification marked Exhibit "C".

A photo copy of the brief for the Interstate Commerce Commission in the *Pipe Line Cases*, (including the *Uncle*

Sam Case No. 507, October Term 1913) is likewise submitted herewith as a further part of this petition for rehearing, and for identification marked Exhibit "D".

From an examination thereof, it will be obvious that the argument made by the respective counsel for the United States and the Interstate Commerce Commission, as well as the conclusion of the majority of this court, employed in an effort to distinguish in principle, the Champlin operations, from the operations of the Uncle Sam Company, are wholly unsupported and unfounded and particularly as to its *use* of the products transported by that company.

II

The effort to distinguish the operations of the Uncle Sam Oil Company in the first paragraph at the top of page 5 of Judge Chandler's typewritten memoranda, by the statement, that the Champlin Company,

> "is transporting oil products *to market for sale to the public* and thus is engaged in transportation in commerce within the meaning of the Act,"

is wholly unsupported by authority and, in fact, falls far short of a correct statement of the law with relation to

> [fol. 748] "interstate transportation * * * as a common carrier for hire."

The Uncle Sam Company was transporting crude oil to its refinery for the manufacture of crude oil products, and the subsequent *sale thereof to the public*. Of that there cannot now be any doubt, as so clearly pointed out by Chief Justice White (562) in his concurring opinion in the *Pipe Line Cases*.

The test, however, is not one of *sale to the public*, but solely one of

> "interstate transportation * * * as a common carrier for hire."

The Champlin Company does not carry anything for the public, for hire, or otherwise. It carries its products for its own account, to a storage tank in Nebraska to another in Kansas and to a third in Iowa, from which storage tanks it there makes sales to the public. *Incidentally, there is not a word of testimony in the record to support the clearly*

drawn inference in the paragraph of the opinion being considered, as to the possibility that a sale or sales may have been made at Enid for delivery through the pipe line.

Neither is the undeviating practice of selling products to the public from the storage tanks only, *technical*, as to the time of transfer of title.

It is a well-recognized method of placing products on the market at a competitive price at the point of delivery.

In *Atlantic Coast Line* v. *Standard Oil Co. of Ky.*, 275 U. S. 257, 72 L. ed. 270, the plaintiff, Standard Oil Company of Kentucky, maintained oil storage tanks in Florida, for the storage of refined products purchased from others which products were carried to the tanks or tank cars by tank steamers. From the storage tanks the plaintiff distributed to the trade its products primarily by means of tank trucks and tank cars. The Railroad Company contended that the [fol. 749] movement over its lines was an interstate movement and that interstate rates, which were higher than the intrastate rates, should apply. The plaintiff contended that such movement of products came to rest when delivered into the storage tanks and that when further shipment was made from them over the lines of the railroad, it was intrastate. On page 267, the court said:

> "It seems very clear to us on a broad view of the facts that the interstate or foreign commerce in all this oil ends upon its delivery to the plaintiff into the storage tanks or the storage tank cars at the seaboard, and that from there its distribution to storage tanks, tank cars, bulk station and drive-in stations, or directly by tank wagon to customers, is all intrastate commerce. This distribution is the whole business of the plaintiff in Florida. There is no destination intended and arranged for with the ship carriers in Florida at any point beyond the deliveries from the vessels to the storage tanks or tank cars of the plaintiff. *There is no designation of any particular oil for any particular place within Florida beyond the storage receptacles or storage tank cars into which the oil is first delivered by the ships. The title to the oil in bulk passes to the plaintiff as it is thus delivered.*" (Italics ours.)

In *General Oil Co.* v. *Crain*, 209 U. S. 211, 52 Law Ed. 754, the question was: whether the shipment of "coal oil"

in tank cars from its wells and refining plants in Pennsylvania and Ohio to a point in Tennessee (Memphis) where the product is barreled for further shipment to customers in Louisiana and other southwestern states, was an interstate shipment from the well and refinery in Pennsylvania to the customer in Louisiana, or did such removal of such "coal oil" from such tank car at Memphis terminate such shipment so as to make such product taxable by the State of Tennessee?

The Supreme Court held that such transportation did there terminate and was taxable.

[fol. 750] Does a different rule apply to shipment of oil, where the transportation agency is a private pipe line, rather than railroad tank cars? We think not. Is there any doubt, in view of these decisions, of the right of the State of Nebraska to tax our products in storage at Superior, or of the State of Kansas to do so at Hutchinson, or of the State of Iowa to do so at Rock Rapids? If these states can so tax such products, then certainly the Interstate Commerce Commission may not regulate their sale thereafter.

The Standard Oil Company of Kentucky, in the *Atlantic Coast Line* case, *supra*, was certainly

> "transporting oil products to market for sale to the public,"

as was the General Oil Company in the *Crain* case, *supra*, and the decisions of the Supreme Court of the United States in those cases completely destroy the conclusion, as well as the reasoning, upon which Judge Chandler erroneously holds the Champlin Company in the employment of its storage tanks for sale of its products to the public, to be engaged in

> "interstate transportation * * * as a common carrier for hire."

Assuming, as stated by Judge Chandler, but not admitting, that the operation is in *commerce;* it certainly is not in "interstate transportation * * * as a common carrier for hire," within the provisions of the Interstate Commerce Act.

The products of the Standard Oil Company of Kentucky in the *Atlantic Coast Line* case, *supra*, of the General Oil

Company in the *Crain* case, *supra*, and of the Champlin Refining Company in this case, all come to rest for sale to the public, when placed in storage tanks at the end of their respective journeys and from there, as so well said by Mr. Chief Justice Taft in the *Atlantic Coast Line* case opinion, *supra*, their

> [fol. 751] "distribution to storage tanks, tank cars, bulk stations and drive-in stations, or directly by tank wagons to customers, is all *intra* state commerce."

This authority should be conclusive of the law in this case and a careful consideration thereof would seem to require a rehearing upon the manifest and fundamental error of Judge Chandler's conclusion that,

> "transporting oil products to market for sale to the public,"

brings one so engaged, within the provisions of the Interstate Commerce Act defining the operations of

> "interstate transportation * * * as a common carrier for hire."

There is grievous and fundamental error in the opinion in this basic and all-important respect.

III

Further error and misconception is found in the same paragraph (top of page 5) of the typewritten memoranda opinion in the discussion of the "differential" charge, followed by the resultant conclusion, viz:

> "In either instance the public pays the *transportation* charge;"

and in the next paragraph will be found the equally erroneous conclusion that,

> "the effect on the public is the same as if title passed to the purchaser at the refinery."

In the first place, the "differential" is not a *transportation* charge within the meaning of the Interstate Commerce Act, any more than the cost of transportation in making up the sale price of the product of the Standard Oil

Company involved in the *Atlantic Coast Line* case, *supra*, and the product of the General Oil Company in the *Crain* case, *supra*, was a transportation charge to the purchaser of such like products.

[fol. 752] When the products of Standard Oil Company involved in the *Atlantic Coast Line* case, *supra*, and the products of General Oil Company involved in the *Crain* case, *supra*, were sold out of the storage tanks into which such products had come to rest, the sales were an intrastate transaction, and whatever amount, if any, may have been added to the cost of such products in the storage tanks from which they were sold, cannot be looked upon, under those decisions, as a transportation charge or as making the sale a part of the interstate commerce by which the products were brought to the storage tanks.

Upon the question of the Champlin Company's right to competitively price its products at Hutchinson, Superior and Rock Rapids, to include a cost equal to that entailed by its competitors in getting their products to such market places, without thereby making a transportation charge against the purchaser or converting itself into the status of a "common carrier for hire," engaged in "transportation in interstate commerce," we also direct the court's attention to the recent opinion in *Interstate Commerce Commission* v. *Tank Car Oil Corporation*, No. 2721 of District Judge Russell, for the Northern District of Georgia, (not yet published) a copy of which opinion is submitted herewith and made a part of this petition for rehearing, being identified as Exhibit "E". We quote from the opinion as follows:

> "* * * As to the law, before the complainant is entitled to the injunctive relief sought, it is necessary for it to convince this court that the operations of the defendant was 'transportation for compensation as a common or a contract carrier,' as held by the Interstate Commerce Commission in T. J. McBroom Contract Carrier Application 29370, 1 M. C. C. 425. This appears to be an excellent statement of the test. Thus, not that the transportation might *result in compensation as a matter of profits to the seller or transporter, but that the effect of the transaction is compensation* [fol. 753] *as a common or contract carrier.* In the *Stickle* case the court found transportation for such

compensation. In the present case, while the court finds that the transportation resulted in profit to the defendant, that is, that it was necessary to transport in order to earn the profit, nevertheless I am unable to find, under the evidence, that there was involved in the transportation any idea of freight or carrier charges. Under the undisputed and uncontradicted evidence, it made no difference where the shipment originated, the cost to the purchaser was the same. *I do not believe that the facts that profit, or compensation, may accrue as a result of transportation is a sufficient test, for if that be so, one who lost money as a result of deliveries for fixed freight charges would not be a carrier.* The real question in any case to be determined is, looking beyond the form of the transaction and to its circumstances, *whether the transportation is for compensation as a common or contract carrier,* or whether *such transportation is incidental to the operation of a commercial enterprise.* In this connection, I find nothing in the statute which prohibits the *conduct of a bona fide wholesale business even if transportation is usually and even exclusively employed as a means of its conduct, provided the operation does not in fact place the operator within the classification of a common or contract carrier.* Thus the fact that the defendant used no storage tanks, in itself does not subject it to the provisions of the statute.

"It is true that ownership of the goods transported is not the sole test whether one is a private carrier or otherwise. However, where bona fide ownership is shown, that fact is, under the definition of private carrier contained in the statute, entitled to considerable weight. *And where bona fide ownership is shown, together with a failure to prove transportation for compensation as a common or a contract carrier, no proper basis exists for classification as a common or contract carrier. Indeed, this does not appear to be seriously questioned by the complainant, its contention is that the profit on the f.o.b. sales of the gasoline is the substantial equivalent of transportation charges between* [fol. 754] *the points involved in the eleven transactions proved in detail, and that this, together with the evidence that the defendant always had an order before he purchased to fill it, shows that in essence the trans-*

> *action was a subterfuge to evade the requirements of the statute.* In view of the testimony from the complainant's witnesses that they purchased gasoline f.o.b. their stations, and neither knew nor cared from whence it came, and the testimony in behalf of the defendant that the prices charged were *based upon competitive conditions in the respective localities*, the inference sought to be drawn by the complainant is not entitled to the weight claimed for it. This is not a case *where the business relates solely to transportation and wholesale sales.* It is shown by the evidence that more than half of the gasoline transported by the defendant was delivered to its retail stations and there sold. As to this portion of the business it is conceded by the complainant that the operations were those of a private carrier. Under the facts here I can find no substantial difference between such transportation for sale at retail and the transportation for sale at wholesale, and accordingly conclude that the complainant has failed to show that in its wholesale operations the defendant is either a common or a contract carrier.
>
> "* * * * * * * "

The reasoning of the opinion is sound and its applicability here is quite evident.

Secondly, there is grave error in Judge Chandler's conclusion that because,

> "the effect on the public is the same as if title passed at the refinery"

the operation is within the regulatory provisions of the Interstate Commerce Act.

The conclusion is erroneous because the premise is unsound. The "effect on the public" could not be "the same as if title passed at the refinery," unless the competitive price continuously dictated a differential equal to the rail [fol. 755] rate cost of transportation to destination; and the evidence shows that such could not be the case.

Furthermore, the purchaser, in the event the sale was made and the title passed at the refinery, would not have the advantage of storage facilities at destination, and would be compelled to assume all risks of transportation not caused by the negligence of the carrier of his selection.

Congress did not intend that the courts should legislatively read into enactments regulating "transportation in interstate commerce" by a "common carrier for hire;" provisions and requirements that are neither there, nor intended to be there.

Mr. Justice Cardozo recognized the force of that principle of judicial interpretation in *Pennsylvania R. R.* v. *Public Utilities, etc.*, 298 U. S. 170, 80 Law Ed. 1130, wherein he said:

> "If the concept of transportation is in need of expansion, it is for the legislative department of the government to determine how great the change shall be."

His further statement, in the same case, is quite important here, *viz:*

> "• • • Appellants would have us hold that this interstate transportation by an owner who does not carry for anyone else will be tacked to the intrastate transportation by railroads who are in business as common carriers, and the movement thus consolidated brought within the statute. The statute and the decisions as we read them forbid this unifying process. *Pipe Line Cases (United States* v. *Ohio Oil Co.)* 234 U. S. 548, 562, 58 L. ed. 1459, 1471, 34 S. Ct. 956; *McCluskey* v. *Marysville & N. R. Co.*, 243 U. S. 36, 39, 40, 61 L. ed. 578, 580, 37 S. Ct. 374; *Atlantic Coast Line R. Co.* v. *Standard Oil Co.*, 275 U. S. 257, 72 L. ed. 270, 48 S. Ct. 107; *Campbell River Mills Co.* v. *Chicago, M. & St. P. R. Co.*, (D. C.) 42 F. (2d) 775, 777, 778, affirmed in [fol. 756] (C. C. A. 9th) 53 F. (2d) 69, 72, 73; *Pennsylvania R. Co.* v. *McGirr's Sons Co.*, (C. C. A. 2d) 287 F. 334.
>
> "• • • • • • • "

and finally, for the avoidance of confusion, his admonition in that case, that,

> "Not all commerce is transportation, and not all transportation is by common carriers by rail."

requires the most careful consideration in this case.

The admission which Judge Chandler says (3rd paragraph, page 5, typewritten copy of memoranda opinion) was made by the Valvoline Company in its case, *viz:*

> "that after such preparation, the transportation would be in commerce,"

is not binding upon the Champlin Company, nor is such admission of any probative force or effect in this case, nor does it by its terms measure responsibility. Furthermore, the products manufactured by the Valvoline Company were delivered to purchasers in cans, or other containers, and never by pipe line.

In complete refutation of Judge Chandler's conclusion in this respect, we need only quote Mr. Justice Reed in the *Valvoline* case, *supra*, upon the ultimate use of the product by the owner. He said: (145)

> "Whether the oil so owned and transported was ultimately used by the carrier in its own operations or *sold to others*, was, in this connection, immaterial."

The connection to which he was referring (to use his language) was, (144)

> "The practice of compelling producers to sell at the well before admitting their oil to the lines was widely used as a means of monopolizing the product before the Hepburn Amendment in (June 29) 1906."

This observation clearly disclaims the applicability of the statute to an operation such as the use of a private pipe line as a marketing agency for refined crude oil products. [fol. 757] It is also proper in this connection to observe that,

> "the effect on the public," (paragraph 2, page 5, typewritten memoranda)

does not determine the status of the Champlin private pipe line *operation*, any more than does the transportation of furniture by truck, or otherwise, by the Sears Roebuck Company, from its Chicago warehouse to its Enid store, for sale to the public, as in neither instance is such business or transportation vested with a public interest.

In *Williams* v. *Standard Oil Company of Louisiana*, 278 U. S. 239, 73 L. ed. 287, it was held that the oil business is not vested with such interest in the public as Judge Chandler seems to think exists and upon which he basi-ly founds his opinion in this case.

In the *Williams* case, *supra*, it was held, that:

> "In order to be affected with a public interest so as to be subject to public regulation, a business or property must be such, or be so employed, as to justify the conclusion that it has been devoted to a public use, and its use thereby in effect granted to the public."

It will surely not be seriously considered, in view of its constant vigilance otherwise, that the Champlin Company has so dedicated its private products pipe line.

A rehearing should be granted, for obviously Judge Chandler's opinion is founded upon the erroneous conclusion that the "public's interest" in the Champlin products pipe line, justifies its conversion by the fiat of the Interstate Commerce Commission into a "common carrier for hire."

The "future" pipe lines referred to by Mr. Justice Holmes in the *Pipe Line Cases, supra*, opinion, are identified by such as are in the future to become "common carriers" in *substance*, if not in *form*.

The later application of the principles of that decision to the Valvoline Company, is illustrative of what Mr. Justice [fol. 758] Holmes had in mind. He did not say, nor intend to say, that one not a common carrier in *fact* could be held to be a common carrier within the Act.

In fact, he carefully stated that those who were common carriers in *substance* (which means in fact) must become so in *form*.

The Champlin Company is not a common carrier in *substance* for hire, or otherwise, and is not engaged in transportation in interstate commerce, as we have pointed out, *supra*. The difficulties encountered by the major companies in the *Pipe Line Cases, supra*, did not arise as a result of what they did with the oil after it had been purchased, as Mr. Justice Reed so aptly observed in the *Valvoline* case, but came about solely as the result of the application of monopolistic practices in obtaining title to and ownership in the oil in the first place.

The Senate Committee reports plainly reveal the evils aimed at by the Hepburn Amendment.

The operation here is not by any stretch of the imagination within those evils or within any definition of monopolistic practices. Furthermore, the regulation of privately owned and operated products pipe lines was not, as is

plainly shown by the history of the times, in contemplation by Congress in the passing of the Hepburn Amendment.

In *United States* v. *Union Pacific R. R. Co.*, 91 U. S. 72, 23 L. ed. 228, the Supreme Court said:

> "But courts may, with propriety, in construing a statute, recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it."

It has also been said by the Interstate Commerce Commission in *Petroleum Rail Shippers Ass'n* v. *Alton & South-* [fol. 759] *ern Railway*, 243 I. C. C. 589, No. 28106, decided March 11, 1941, that:

> "Prior to the perfection of the process of electric welding, pipe line transportation was practically confined to the crude oil. That process has made possible the transportation of refined petroleum without loss by reason of imperfect pipe joints; and as a result, since 1931 there has been a rapid growth of gasoline pipe lines."

Construing the Hepburn Amendment to the Interstate Commerce Commission Act in the light of the history of the times of its enactment, we must bear in mind that when the Hepburn Amendment was enacted, there were no petroleum products pipe lines. Furthermore, there is no problem now in their operation, such as brought about the Hepburn Amendment. It was not until about 1930 when the art of building welded steel pipe lines was perfected, that it became practicable to use such pipe lines for the transportation of refined petroleum products.

It, therefore, seems quite obvious, in view of the text of the reports of the Senate debate upon the legislation being considered, that Congress was not seeking to regulate the transportation in interstate commerce of refined petroleum products from a refinery to storage facilities at market points. Such activity being then unknown could not have been in contemplation.

The crude oil used in manufacturing products for transportation in the Champlin line, admittedly have been purged of the taint and evils concerning which the Senate

debated and upon which Congress legislated, and the Supreme Court in the *Pipe Line Cases, supra*, considered.

IV

These considerations bring us to the two paragraphs (paragraphs 4, page 6, and paragraph 2, page 7, of the type-[fol. 760] written memoranda) which the petitioner says unequivocally overrule the Supreme Court of the United States in the *Uncle Sam* case, as well as in the *Valvoline* case.

The first paragraph referred to reads as follows:

> "In our opinion, the plain meaning of the Act as amended is that its provisions apply to *all engaged in the interstate transportation of oil or other commodities, except water and except natural or artificial gas by pipe line.*" (Emphasis by the court.)

The second paragraph also referred to reads as follows:

> "In the *Valvoline Oil Company* case, the court held that the provision in the 1920 amendment that the Act applied to 'all pipe line companies' did not narrow the coverage of the Act. *We think this change in verbiage was made for the purpose of making it clear, if any doubt was created by the Uncle Sam Oil Company decision, that all future pipe lines engaged in the interstate transportation of oil or other commodities, except water and natural or artificial gas, were covered by its terms.*" (Emphasis by the court.)

Brief disposition may be made of the conclusion expressed in the first quoted paragraph.

If the paragraph as quoted had been the law at the time of the *Uncle Sam* decision, the exception which was there granted could not have been granted that company.

No one will question the accuracy of that statement. So that, if the opinion of this court is to stand, it must rest upon a change in the law since the *Uncle Sam* decision, and unless a change has been made in the law by the Hepburn Amendment, this opinion overrules the opinion of Mr. Justice Holmes in the *Uncle Sam Company* case, which we say this court may not, with propriety, undertake to do.

We are now brought to a consideration of the second quoted paragraph of this court's opinion, *supra*, in which

it is said in substance that there has been a change in the [fol. 761] law to meet what is necessarily thereby viewed by this court as an emergency created by the *Uncle Sam* decision.

This quite unusual conclusion upon the part of this court, also specifically and unequivocally overrules the opinion of Mr. Justice Reed in the *Valvoline* case, *supra*, who while recognizing the soundness of the exception, granted the Uncle Sam Company in the *Pipe Line Cases, supra*, took occasion to carefully point out that while

> (145) "In the present Act there is a change of language, * * * we perceive none in meaning."

It is important to note, as we shall more fully point out in the brief supporting this petition, that the United States and the Interstate Commerce Commission were then in accord with the quoted finding by Mr. Justice Reed. In their brief in the Supreme Court of the United States in the *Valvoline* case, at page 13, they said:

> "While the applicable sections of the Act have been amended in *minor details since* that decision (the *Pipe Line Cases*) the amendment simply clarifies the language of the statute and *does not make any important change* in policy." (Italics ours.)

At page 23 of the same brief, it is also said:

> "* * * * * * * * *
>
> "There is no merit in Valvoline's argument that the Transportation Act of 1920 (41 Stat. 456) so revised the language of Section 1 as to narrow its scope; the section as it now stands is even more clearly applicable to Valvoline than it was prior to its revision. The purpose of the revision was obviously only simplification of language; there was no intent to reverse the legislative policy of more than a decade. The bill which became the Transportation Act of 1920 was reported to the House and Senate by their conferees with the following comment on the section embodying the revision:
>
> 'Section 400 amends the first five paragraphs of Section 1 of the Commerce Act, making minor

> [fol. 762] corrections and classifying language in several respects, but making no important change in policy. (Report No. 456, Nov. 10, 1919, to accompany H. R. 10453, 66th Cong., 1st Sess.)'."

Quite evidently there is a change of position now being urged for the purpose of again attempting to secure a rule of construction, which the Supreme Court was unwilling to grant in the *Valvoline* case.

A true copy of the brief of the United States and the Interstate Commerce Commission filed in the Supreme Court of the United States in the *Valvoline* case, is submitted herewith as a part of this petition, and for identification marked Exhibit "F"; together with like copy of Valvoline's brief in the Supreme Court of the United States, which is likewise submitted herewith as a further part of this petition for rehearing, and for identification marked Exhibit "G."

The facts with regard to the purpose of the 1920 Amendment remain now as they were then.

May it be anticipated that the Supreme Court will accept an interpretation by this Court, which is contrary to its interpretation placed upon the 1920 Amendment, in the *Valvoline* case, which was founded upon factual statements then made by the Government, which are now brazenly repudiated?

We think not.

Upon the issue as to whether the Valvoline interstate pipe line was a "statutory" common carrier, the Government submitted to the Supreme Court, the affirmative of such contention at page 21 of its brief, as follows:

> The fact that Valvoline is a pipe line company, is determinative of the fact that it is a common carrier within the meaning of the Act; Section 1 (3) expressly directs that the term 'common carrier . . . shall include all pipe line companies'."

This court has so held unequivocally. The Supreme Court very definitely refused to so hold.

We quote from that decision in support of this statement, as follows:

. . . . . .

"There is no controversy over whether appellant is an interstate pipe line company. Obviously it is. The contentions above are advanced to show it is not subject to the Act. Section 1(3) defines common carrier to [fol. 763] include 'all pipe-line companies.' If this definition is not limited by the subsequent clause 'engaged * * * as common carriers for hire,' extended consideration of these characteristics of a private carrier is unnecessary as the language of the definition is decisive.

"* * * * * * *"

The decision against Valvoline was then entered upon the authority of the application of the principles controlling the monopolistic practices employed in the *Pipe Line Cases* and certainly not upon any conclusion that, regardless of use, interstate pipe lines, as such, were "common carriers" within the 1920 Amendment.

The opinion of this court amounts to a disapproval of the decisions of the Supreme Court,

(*a*) in granting an exception to the Uncle Sam Company in the *Pipe Line Cases*, which is controlling here;

and,

(*b*) for the refusal of this court to follow the decision in the *Valvoline* case, denying the Government's contention there, that an interstate pipe line is a "statutory" common carrier;

and a rehearing should, therefore, be granted petitioner in order that a judgment may be entered in its favor in accordance with the decisions of the Supreme Court in the *Pipe Line* and *Valvoline* cases, as aforesaid.

V

Reference is made in the concluding paragraph of the opinion, as to the charter of the Champlin Company. That charter does not authorize it to operate as a common carrier for hire, in interstate transportation. Its right to transport crude oil is obviously intended to solely cover the private hauling of its own products, which it has been careful to do. It is a producer, refiner and marketer of crude oil,

[fol. 764] but never a *carrier* under any definition that has been written of the status of that relationship.

The reference (paragraph 4, page 7, opinion) to the Valvoline charter and its transportation of oil to its two refineries, is quite foreign to the question.

The operations of the Valvoline Company in question, were but a replication upon a smaller scale, of the operations of the major companies which were condemned in the *Pipe Line Cases, supra*, and upon that basis alone, it was held to be within the terms of the Act. Nothing can be more certain than that statement.

There is no resemblance in any respect between Valvoline's operations in the purchase of crude oil from some 9,000 small producers in the Pennsylvania, Ohio and West Virginia area, who had no other outlet and who were required to sell before receiving pipe line clearance, and the operations of the Champlin Company in hauling, at its expense, its manufactured products to distant storage tanks for sale at such points upon competitive prices wholly fixed by others.

The petitioner, therefore, respectfully asks that it be granted a rehearing thereon and renews the prayer of its complaint in all respects.

Champlin Refining Company, Petitioner, by Harry O. Glasser, Dan Moody, Counsel.

[File endorsement omitted.]

EXHIBIT "A"

To the Petition for Rehearing

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

October Term, 1913.

No. 507.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

THE UNCLE SAM OIL COMPANY.

Appeal from the United States Commerce Court.

Filed April 10, 1913.

SUPREME COURT OF THE UNITED STATES.

October Term, 1912.

No. 1054.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

THE UNCLE SAM OIL COMPANY.

Appeal from the United States Commerce Court.

INDEX.

	Original.	Print.
Caption	a	1
Petition for injunction	1	1
Exhibit A. Opinion and order of the Interstate Commerce Commission in the Matter of Pipe Line, June 3, 1912 (omitted in printing)	13	.....
Appearance for the Interstate Commerce Commission	29	9
Order extending time to answer	30	9
Answer of the Interstate Commerce Commission	31	9
Exhibit A. Opinion of the Interstate Commerce Commission in the Matter of Pipe Lines, June 3, 1912 (omitted in printing)	46	.....
B. Order of the Interstate Commerce Commission, June 3, 1912 (omitted in printing)	58	.....
C. Map (omitted in printing)	59	.....
Answer of the United States	61	17
Order granting leave to file amended answer	84	41
Amended answer of the United States	85	42
Affidavit of H. H. Tucker, jr.	89	47
J. H. Ritchie	90	47
Order for the completion of the record	92	49
Certified copies of tariffs	93	49
Journal entries	99	54
Proceedings of October 29, 1912	99	54
Proceedings of October 30 and 31, 1912	100	54
Opinion by Knapp, J. (omitted in printing)	102	.....
Dissenting opinion by Mack, J. (omitted in printing)	150	.....
Order granting preliminary injunction	160	55
Petition for appeal	162	56
Assignment of errors	163	57
Order allowing appeal	167	59
Clerk's certificate	168	60
Citation and service	169	60
Stipulation to omit part of record in printing	170	61

a

In the United States Commerce Court.

No. 76.

The Uncle Sam Oil Company, petitioner,
vs.
The United States of America, respondent; Interstate Commerce Commission, intervener.

United States of America, ss:

Be it remembered that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition for injunction.

(Filed July 23, 1912.)

1 In the United States Commerce Court.

Docket No. 76.

The Uncle Sam Oil Company, petitioner,
vs.
The United States of America, respondent.

Petition for injunction.

To the Judges of the United States Commerce Court:

The Uncle Sam Oil Company, as petitioner herein, for its petition against the respondent, the United States of America, complains, alleges, and avers:

1. That your petitioner, The Uncle Sam Oil Company, was duly and legally incorporated as a private corporation under the laws of the Territory of Arizona in February, 1905, for the purpose of producing crude petroleum, transporting it from its oil wells to its refineries, refining and marketing the same, and that ever since said incorporation your petitioner has been and now is a private mining and manufacturing corporation, existing under the laws of Arizona and doing a private business according to law.

2 2. That on the date of its said incorporation the law under which it was incorporated prohibited it from constructing or operating any railway, tramway, or other means for transporting persons or property for hire, and specifically provided that your petitioner should have no power to construct or operate any means for transporting persons or property except such as may lead from the principal works or place of business of your petitioner to some navigable stream, or to some existing railroad, turnpike, or public

highway, and that said law then became and now is a part of the charter of your petitioner, and thereby your petitioner has no power to engage in the business of transporting persons or property as a common carrier.

3. That immediately after the date of its incorporation as aforesaid, your petitioner erected, at large expense, one of its refineries for refining crude petroleum, near the city of Cherryvale, in the State of Kansas, and drilled in many oil wells on its leased land in the Osage Indian Reservation, in the State (then Territory) of Oklahoma; that it markets its refined products by establishing distributing stations in the trade centers most accessible to each of its refineries, at which stations it has erected large storage tanks and equipment, and has tank wagons to make delivery of the products which it ships to said stations by the carload; that it now has about eighty stations in Kansas, Oklahoma, and Missouri depending chiefly upon said refinery for their supply of refined oils; that it applied to the Atchison, Topeka and Santa Fe Railway Company, the only railway line extending from the oil wells of your petitioner to the said refinery of your petitioner, and demanded that said railway company should transport the oil from the wells to said refinery and at a fair and reasonable rate; that at said time your petitioner was producing, refining, and marketing its oil in competition with The Standard Oil Company, which company had its vice president and active manager, H. H. Rodgers, and other representatives upon the board of
3 directors of said railway company; that said railway company established a freight rate of 39 cents per barrel on crude petroleum, from the oil wells of your petitioner, near the city of Bartlesville, Oklahoma, to the refinery of your petitioner, near the city of Cherryvale, Kansas, a distance of approximately sixty miles, and provided that your petitioner should provide the tank cars in which such crude oil should be shipped; that the market price of crude oil at that time was only 35 cents per barrel, and the price of refined oil was such as to make said freight rate prohibitive: that it was excessive, unreasonable, and unjust; that your petitioner could not pay said rate and continue its competition with the Standard Oil Company with the products of said refinery; that to avoid such ruinous freight rate your petitioner was compelled to and did construct a three-inch pipe line, extending from near its oil wells and near the said city of Bartlesville, in the State of Oklahoma, to its refinery near the said city of Cherryvale, in the State of Kansas, and connected its said oil wells with said pipe line by smaller gathering lines in the oil field; that since in the year 1906 your petitioner has operated said pipe line, pumping its own oil from the wells in Oklahoma to its said refinery in Kansas, and supplied said distributing stations from said refinery, and maintained its competition with the Standard Oil Company, in spite of said freight rate.

4. That your petitioner, during all of the time since constructing said pipe line, has used the same for the sole and exclusive purpose

conducting or gathering its own oil from the wells to its refinery, and such use has been necessary; that your petitioner has never transported any oil for any other person, firm, or corporation; that your petitioner during all of said time has never been requested to transport any oil for others from Bartlesville to Cherryvale or vice versa; that the market price for crude oil has remained the same at Bartlesville as at Cherryvale, and there has been and now is no reason why any person, other than your petitioner, should desire to transport any crude oil from Bartlesville to Cherryvale or from Cherryvale to Bartlesville; that there is no refinery for refining crude oil at Cherryvale except said refinery of your petitioner, and it is supplied from the wells through said pipe line.

5. That your petitioner has at no time held itself out to the public as willing to carry oil for the public by means of said pipe line, nor that it was willing to assume the duties and obligations of a common carrier; that your petitioner has no power to engage in the business of a common carrier; that it has no facilities for receiving, storing, transporting, and delivering to another any oil that might be tendered for shipment; that the oil in that oil field is of different grades, quality, and value, and your petitioner has no means whereby it could receive, store, transport, and deliver to another the same oil that should be tendered for transportation; that under these conditions it is physically impossible for your petitioner to assume the duties and responsibilities of a common carrier to receive, store, transport, and deliver to the consignee or owner the same oil which may be tendered for shipment.

6. That the transaction whereby your petitioner produces the crude oil at the wells, gathers it from the wells, and pumps it to its refinery as above stated, is a transaction wholly within your petitioner; that there is no other person concerned with it and no element of commerce in it; that it is purely a private transaction, and does not come under the jurisdiction of the Interstate Commerce Commission; that there is no law giving said commission any right or authority to interfere with or molest your petitioner in the free use of its said pipe line in the conduct of its said private business; that your petitioner is the lawful owner of said pipe line, and has the right under the Constitution and laws of the United States to possess, use, and enjoy said pipe line free from the dominion, interference, or control of said Interstate Commerce Commission or any one else; that the right to refuse to surrender said pipe line to the public is property belonging to your petitioner and cannot be taken from your petitioner without due process of law.

7. That said pipe line is necessary to enable your petitioner to prosecute its business and maintain its competition with the Standard Oil Company; that the entire capacity of said pipe line is and will be constantly required to supply the refineries of your petitioner; that your petitioner anticipates that in the near future it will be necessary to enlarge the line to meet the requirements of your petitioner's

own private demands thereon, and that if your petitioner should be required to surrender to the public the use of said pipe line it would be compelled to close its said refinery at Cherryvale, Kansas, for lack of facilities to transport its own oil from its wells to its said refinery; that its private business would very injuriously be affected, and its ability to maintain its competition with the Standard Oil Company in the territory now supplied by said refinery would thereby be greatly diminished if not destroyed.

8. That heretofore the Interstate Commerce Commission, upon its own motion, instituted certain proceedings entitled "In the Matter of Pipe Lines, No. 4199," for the purpose of determining its jurisdiction over and concerning certain pipe lines in the United States, among which is the pipe line of The Uncle Sam Oil Company. Your petitioner and various other corporations and partnerships were made respondents, and on the 8th day of June, 1911, the Interstate Commerce Commission made a certain order in words and figures following, to wit:

6 Interstate Commerce Commission.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of June, A. D. 1911.

Present: Judson C. Clements, Charles A. Prouty, Franklin K. Lane; Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.

No. 4199.

In the Matter of Pipe Lines.

Complaint being made to this commission that the carriers hereinafter named, and each of them, have established certain rates, classifications, and regulations which were unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of the act to regulate commerce and acts amendatory thereof, and that the practices of said carriers, and each of them, in the conduct of business subject to said act are unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of said act, and good cause appearing therefor.

It is ordered, That an inquiry be, and the same is hereby, instituted in the above-mentioned matters by this commission on its own motion, and that the rates, classifications, regulations, and practices of the various corporations and persons engaged in the transaction of oil and other commodities, except water, and except natural and artificial

gas, by means of pipe lines, or partly by pipe lines and partly by
7 railroad, or partly by pipe line and partly by water, subject to the act to regulate commerce and the acts amendatory thereof, and of each of them, to determine whether such rates, classifications, regulations, or practices, or any of them, are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial or otherwise in violation of any of the provisions of the said act, and to determine the manner and method in which the business of said corporation and persons, and each of them is conducted.

It is further ordered, That the following corporations and persons engaged in such transportation subject to said act to regulate commerce and acts amendatory thereof be, and each of them is hereby, made parties respondent to this proceeding, viz:

The Buckeye Pipe Line Company,
The Columbia Pipe Line Company,
The Crescent Pipe Line Company,
Cumberland Pipe Line Company (Incorporated),
Emery Pipe Line,
The Eureka Pipe Line Company,
Gulf Pipe Line Company,
Gulf Pipe Line Company of Oklahoma,
Higgins Oil & Fuel Company,
Indiana Pipe Line Company,
National Transit Company,
New York Transit Company,
Northern Pipe Line Company,
Producers & Refiners Oil Company (Limited),
Producers Oil Company (Limited),
Pure Oil Company,
South West Pennsylvania Pipe Lines,
Southern Pipe Line Company,
The Texas Company,
United States Pipe Line Company,
Acme Oil Company,
Anchor Oil & Gas Company,
8 Associated Oil Company,
Associated Pipe Line Company,
Central Oil Company of Los Angeles,
Cornplanter Refining Company,
Corsicana Refining Company,
Dougherty & Son Refining Company, W. H.;
Evangeline Oil Company,
Franklin Pipe Line Company,
Guffey Petroleum Company, J. M.;
Gulf Refining Company of Louisiana,
Industrial Pipe Line Company,
Kansas Cooperative Refining Company,
Kansas Crude Oil & Gas Company,
Kansas Natural Gas, Oil & Pipe Line Improvement Company,

Kasigan Oil, Gas & Power Company,
Manhattan Oil Company,
The Modelo Oil Company,
National Pipe Line Company,
National Refining Company,
The Ohio Oil Company,
Paragon Refining Company,
Prairie Oil & Gas Company,
Puente Oil Company,
Pure Oil Company,
Rio Bravo Oil Company,
Security Oil Company,
Standard Oil Company of California,
Standard Oil Company of Kansas,
Standard Oil Company of Louisiana,
Sun Company,
Sun Pipe Line Company,
Tidewater Oil & Pipe Company,
Tidewater Pipe Company (Limited),
Uncle Sam Oil Company,
Uncle Sam Oil Company of Kansas,
9 Union Oil Company of California,
The Union Petroleum Company of Philadelphia,
Union Pipe Line Company,
Vacuum Oil Company,
Wellsville Refining Company.

A true copy.

(Seal) Judson C. Clements, Chairman.

That said order was duly served on your petitioner. Thereafter, at certain hearings provided by the commission, testimony and other evidence having been offered, received, and considered by the commissioner, on the 28th day of March, 1912, the Interstate Commerce Commission made a further order and caused the same to be duly served on your petitioner and the other respondents in said proceeding, propounding certain questions of law to each and all of the respondents in said proceeding, and requesting and directing that respondents appear before said commission in the City of Washington on the 10th day of May, 1912, for the argument and hearing of the questions of law submitted as aforesaid.

9. That, as directed in said order, your petitioner appeared and submitted its brief and argument in writing. Afterwards, on the 3d day of June, 1912, the Interstate Commerce Commission made, rendered, and published its report, in the nature of findings of fact and conclusions of law, accompanied by a further order of said commission in said proceeding, a copy of which report and order is hereto attached marked "Exhibit A," and the same is hereby made a part of this petition.

10. That by the terms of said last-mentioned order your petitioner is required on or before September 1, 1912, to file with the Interstate Commerce Commission schedules of its rates and charges for the transportation of oil, as a common carrier, in compliance with the said commission's construction of the provisions of the act to regulate commerce. That your petitioner has not now and never has had any schedules of rates and charges for the transportation of oil. It has never transported nor offered to transport any oil other than its own oil. Its incorporation was procured, its stock subscribed and sold, for the purpose of engaging in a private business, in manner and form that said business is now and heretofore has been conducted by your petitioner. That the stockholders and directors of the Uncle Sam Oil Company have never given their consent, or in any manner authorized the managing officers of your petitioner to divert the property owned by it or any part thereof from the necessary private uses in which it is now employed, to the public service, or to the service of any other person, and they have no power to do so. That the pipe line of the Uncle Sam Oil Company can not nor can any part thereof be employed in the transportation of oil for the public or any other person without impairment and destruction of the value of the same to its owner as a necessary, economical, and efficient means of carrying on, conducting, and maintaining the business in which it is now engaged. That the order of said commission last above referred to and set out in Exhibit A to this petition, is illegal and void, for the reasons, first, because the Interstate Commerce Commission does not have and possess any jurisdiction or control over the pipe line of this petitioner, or any lawful authority to make such order; second, because said order, should the same be made effective and be enforced, would impose all the burdens, liabilities, and responsibilities of a common carrier upon this petitioner without its consent, without its power to assume them, and deprive it of its property, the use and control thereof, without due process of law, and in violation of the fourteenth amendments to the Constitution of the United States; and, third, because said order, should the same be enforced and become effective, would render the pipe line of your petitioner ineffective and inefficient for the purposes for which it was constructed and ever since has been used, and appropriate the same to the service of the public, to the exclusion of the use thereof by the owner, which would be a taking of the private property of your petitioner for a public use without just compensation, in violation of the fifth amendment to the Constitution of the United States.

11. Your petitioner further avers that if said order of the Interstate Commerce Commission is allowed to become and be effective many suits for penalties would be brought against your petitioner by many persons interested in said order and its enforcement and claiming to be injured by the acts of your petitioner, which suits would be prosecuted as aforesaid by very many persons in the judicial districts of the United States against your petitioner, whereby your petitioner would be subjected to a great multiplicity of suits.

and great loss and damage would be inflicted upon it, all of which would greatly injure and embarrass your petitioner in the transaction of its business, unless said order be obeyed, and your petitioner thereby surrender and be deprived of the use and enjoyment of its own private property, to its irreparable injury through the impairment and destruction of its ability to carry on the business in which it is now engaged and to which the present employment of its pipe line is essential and necessary.

12. Your petitioner further avers, notwithstanding the facts aforesaid, that said Interstate Commerce Commission maintains and intends to maintain and will, unless the same is enjoined or suspended by the order of this honorable court, maintain the said order as an effective order, and institute or cause or suffer to be instituted the judicial proceedings aforesaid, which acts and doings are contrary to equity and good conscience, and violative of the property rights of this petitioner.

12 13. Your petitioner therefore prays that upon the filing of this petition a temporary or interlocutory order be entered herein, suspending the said order of the said Interstate Commerce Commission and restraining the enforcement thereof and restraining the said Interstate Commerce Commission from taking any steps or instituting any proceedings to enforce said order, and upon the final hearing of this cause that a decree be entered herein setting aside and annulling said order of the said Interstate Commerce Commission herein complained of, and perpetually enjoining the enforcement of the same, and that respondent and its agents, servants, and representatives, and each and all of them be perpetually enjoined from enforcing the said order and from taking any steps or instituting any proceedings for the enforcement of the same.

Your petitioner further prays that if any delay intervenes between the filing of this petition and the issuance of a temporary or interlocutory order, as prayed for herein, then and in that case an order be entered suspending the said order of said Interstate Commerce Commission, restraining and enjoining the enforcement thereof until the hearing and final determination of the application for a temporary or interlocutory order prayed for herein, and your petitioner further prays that it be granted such other and further relief in the premises as justice and equity may require.

Your petitioner further prays that your honors grant unto it a writ of subpoena to the United States of America and that due service thereof be made on the respondents and upon the Interstate Commerce Commission, commanding them at a certain day and under a certain penalty therein to be specified, to appear before this court and then and there full, true, and complete answer make to all and singular the premises; but not under oath (an answer under oath being hereby expressly waived), and to stand and abide by such order and decree herein as to the court shall seem meet and agreeable to equity and good conscience.

Albert L. Wilson,
Solicitor for Petitioner.

Appearance.

29 (Filed July 25, 1912.)

In the United States Commerce Court.

No. 76.

The Uncle Sam Oil Company, petitioner,

v.

The United States of America, respondent.

Mr. George F. Snyder,

Clerk United States Commerce Court, Washington, D. C.:

I hereby enter the appearance of the Interstate Commerce Commission as intervening respondent, and of myself as its solicitor, in the above-entitled case.

Dated Washington, D. C., July 24, 1912.

Chas. W. Needham,
Assistant Solicitor.

30

No. 76.

In the United States Commerce Court.

The Uncle Sam Oil Company, petitioner,

v.

The United States of America, respondent.

Order extending time to answer.

(Entered July 31, 1912.)

Upon application duly made in that behalf, and good cause being shown, it is ordered that the time within which the United States of America, respondent, and Interstate Commerce Commission, intervening respondent, may answer the petition filed in the above entitled cause be, and the same is hereby, extended to and including September 16, 1912.

Marlin A. Knapp,
Presiding Judge.

31

In the United States Commerce Court.

In Equity. No. 76.

The Uncle Sam Oil Company, petitioner,

v.

The United States of America, respondent.

Interstate Commerce Commission, intervening respondent.

Answer of the Interstate Commerce Commission.

(Filed September 4, 1912.)

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained,

for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answering says:

I.

This respondent admits that The Uncle Sam Oil Company, petitioner herein, is a corporation and was duly organized in February, 1905, under the laws of the Territory of Arizona for the purpose, among other things,
of transporting oil by means of pipe lines; and this respondent
32 alleges that in and by its said charter the petitioner is authorized to transport oil by pipe lines and that the petitioner is not restricted to the transportation of oil produced or owned by it, but on the contrary the petitioner may transport oil for any person, persons, firms, or corporations applying to it for such service; all of which will more fully appear by an inspection of its said charter, production of which charter or a certified copy thereof upon the hearing of this suit is hereby requested.

II.

Further answering, this respondent alleges that said petitioner has constructed a pipe line and is operating the same as hereinafter shown; that said petitioner is transporting crude oil by means of said pipe line from points in the State of Oklahoma, in what is known and is hereinafter described as the Mid-Continent field, to points in the State of Kansas; that said petitioner, as respondent is informed, also transports crude oil from said Mid-Continent field through its pipe line and over through route connections operated by other common carriers and delivers said oil at points in the State of Missouri and in States other than that at the point of origin of such shipments; that, the premises considered, the petitioner is engaged in interstate commerce subject to the regulating power of the Congress of the United States.

Further answering, this respondent admits that the petitioner is in
possession of, by lease or otherwise, and operates oil wells in the
33 Mid-Continent field; that it owns and maintains receiving and storage tanks and distributing stations in the States of Kansas, Oklahoma, and Missouri in connection with its said pipe-line transportation business, and that it owns and operates a refinery for refining crude oil near Cherryvale, in the State of Kansas, as alleged in said petition. But this respondent neither admits nor denies the allegations in said petition to the effect that the petitioner produces or owns all the crude oil which it transports in interstate commerce, or that all the crude oil transported by it as aforesaid, stored in its tanks, and delivered to and refined at the refineries, or delivered at stations owned by petitioner and from there marketed, is wholly owned by the petitioner. This respondent alleges that receiving and storage tanks are a necessary and essential equipment to and a part of the pipe-line transportation facilities operated by the petitioner; that whether said crude oil, transported by the petitioner as aforesaid, is produced at the points of origin from wells owned or

operated by the petitioner; or whether said crude oil so transported has been purchased by the petitioner at the points of origin; or whether all the crude oil so transported is owned by the petitioner; or whether all of the crude oil so transported is delivered to and refined at the refineries owned or operated by the petitioner; or whether the petitioner has refused to transport crude oil for other persons, firms, or corporations, or has not heretofore made or published rates or tariffs for such transportation services, are and each alleged fact aforesaid is wholly irrelevant and immaterial in determining the power of Congress in the premises, and whether under the said act to regulate commerce as amended the order in controversy in this suit is, or is not, a lawful and valid order binding and obligatory upon the petitioner herein.

34

Further answering, this respondent neither admits nor denies that the petitioner is by law prohibited from constructing or operating any railway, tramway, or from transporting by other means persons or property for hire as alleged in said petition, but if such be facts, as alleged, this respondent says that such facts are, and each of them is, wholly irrelevant and immaterial to the determination of the matters in controversy in this suit.

Further answering, this respondent denies each and every allegation in said petition which expressly or in effect alleges that the petitioner has no power to transport crude oil by means of pipe lines as a common carrier, or that petitioner can not transport crude oil from said mid-continent field for different and many independent shippers, receiving at the point of origin and delivering at the point of destination crude oil of like grade; or that petitioner can not transport through its pipe line crude oil for the public at reasonable rates to be fixed and published as required by the act of Congress aforesaid and by the order in question.

And this respondent avers that said petitioner is not compelled by said act, or by the order in question, to engage in, or to continue the business of, transporting crude oil by means of pipe lines from points in one State to points in another State; nor is the petitioner compelled by said act, or by said order, to put its said pipe line to the service of the public; but if the petitioner does engage in, or continue, the interstate transportation business aforesaid, it is, and will be, subject to the said act to regulate interstate commerce and must comply with the requirements and regulations of said act and with the orders of this respondent made under and in conformity with said act.

35

III.

Further answering, this respondent neither admits nor denies the several allegations of fact contained in paragraphs 3, 4, 5, 6, and 7 of said petition, but avers that the alleged facts, if true, are, and each is, wholly irrelevant and immaterial to the determination of the matters in controversy in this suit in view and upon consideration of the facts set forth in respondent's said report (Exhibit A hereto) and in this answer.

IV.

This respondent admits that it made the order complained of, and served the same upon the petitioner, and conducted the hearing referred to in paragraphs 8 and 9 of said petition; that the petitioner appeared at said hearing and then and there submitted the statement of facts set forth in the petition herein, with oral arguments and printed brief
36 thereon; that after due and full consideration of all the statement of facts, arguments, and briefs submitted by the petitioner as aforesaid this respondent, on the 3d day of June, 1912, made, rendered, and published, as required by said act, its report, findings, and conclusions therein, and made, entered, and served upon the petitioner the order in controversy; and that on July 18, 1912, at the request of the petitioner and other pipe-line companies, said order was amended by making the effective date thereof November 1, 1912.

This respondent alleges that said order was made after a full hearing regarding the matters involved therein had been given and accorded to the petitioner herein, and after due consideration of all the statement of facts, arguments, and briefs presented to respondent by said petitioner as aforesaid; that said hearing was instituted and conducted by this respondent in all respects as required by the said act to regulate commerce as amended; that notice of the hearing and copies of the report and order in controversy were duly served upon the petitioner; and that this respondent was fully empowered and authorized by the act aforesaid to make and enter said order. A copy of said report, entitled "No. 4199. In the Matter of Pipe Lines," is hereto attached, marked "Exhibit A," and the same is hereby made a part of this answer. A copy of the said order in question is hereto attached, marked "Exhibit B," and is also made a part hereof.

37 V.

Further answering, this respondent says that the petitioner herein made application to the Secretary of the Interior of the United States, at Washington, D. C., for a right of way for a pipe line over Indian lands from a point near Bartlesville, then in the Indian Territory, to a point on the State line of Kansas, near Caney, Kans., a distance of about twenty-three miles; that said application was made under the provisions of an act of Congress approved March 11, 1904 (33 Stat., 65), and the regulations of the department thereunder; that accompanying said application were maps showing the proposed pipe line, copy of charter, and other evidencial matter required by said act and regulations; that on or about the 21st day of January, A. D. 1907, there was filed a map of definite location; that the Secretary of the Interior on the 31st day of January, 1907, granted said application under and subject to the provisions of said act and the "regulations of December 21, 1906 (copy inclosed)"; that the petitioner accepted said grant of a right of way aforesaid and constructed a part of its pipe line thereover, and is now operating the same subject to all the provisions and reservations contained in said act and

the published regulations aforesaid, to which reference is hereby made. That said act, among other things, provided:

"That the Secretary of the Interior is hereby authorized and empowered to grant a right of way in the nature of an easement for
38 the construction, operation and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, through any lands held by an Indian tribe * * *. No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from, and the maps of definite location of said lines approved by, the Secretary of the Interior; * * *

"Sec. 2. The right to alter, amend, or repeal this act is expressly reserved."

That among the rules and regulations prescribed by the Secretary of the Interior, under authority of law, for the granting of rights of way to pipe-line companies, of date December 21, 1906, was the following:

"And no application for the construction of a pipe line will be approved unless the applicant agrees that such pipe line shall be held to be a common carrier and agrees to all the provisions hereof."

And also:

"The approval of any application for oil pipe lines and other privileges is on the condition that the permittees thereof shall accept and deliver shipments of oil at any regular station on their line."

That said regulations were in full force and effect at the time said right of way was approved by the Secretary of the Interior, accepted by petitioner, and its said line was located and constructed subject to the regulations aforesaid. (Reference is hereby made to the published regulations aforesaid issued by the Department of the Interior.)

39 That the acceptance of said right of way as aforesaid subjected the petitioner to all said laws and regulations, relating to the use thereof, then in force and which Congress should thereafter enact or authorize, and the petitioner, by its voluntary act, became a common carrier of oil.

VI.

This respondent alleges that the proceedings and order in controversy were had and made under, and in conformity with, the act of Congress entitled "An act to regulate commerce," as amended, which act provides, among other things, as follows:

"That the provisions of this act shall apply to any corporation * * * engaged in the transportation of oil * * * by means of pipe lines * * * who shall be considered and held to be common carriers within the meaning and purpose of this act. * * *;"

And—

"That every common carrier subject to the provisions of this act shall file with the commission created by this act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route

and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established."

That if, and so long as, the petitioner engages in the business
40 of transporting crude oil by means of pipe lines from points in one State to points in another State by the means and instrumentalities aforesaid, it is, by reason of the premises and the provisions of the act to regulate commerce aforesaid, to be considered and held to be a common carrier within the meaning and purposes of said act, and the petitioner is expressly required by said act to file with this respondent schedules of rates and charges for the transportation of oil, as aforesaid.

VII.

Further answering, this respondent says:

That the crude oil produced in the United States is described by "fields," and they are known as the Appalachian field, covering parts of the States of New York, Pennsylvania, West Virginia, southeastern Ohio, Kentucky, and Tennessee; the Lima-Indiana and Illinois field, covering parts of northwestern Ohio, Indiana, and Illinois; the Mid-Continent field, herein referred to, covering parts of the States of Kansas and Oklahoma; the Gulf field, covering parts of the States of Louisiana and Texas; the Caddo field, in Louisiana and Texas; and other fields in the States of California, Colorado, Wyoming, Michigan, and Missouri; that the annual products of crude oil within the United States, as shown by the official statistics for the calendar year 1910 (the last official figures available), was 209,556,048 barrels of the value of $127,896,328; that of this
41 total production the Mid-Continent field for the year aforesaid produced 53,157,386 barrels, of about the value of $31,974,082, or about one-fourth of the quantity and value of the total production of the United States; that the crude oil in the Mid-Continent field is produced from wells owned and operated by more than 2,000 operators.

A map showing the fields of production of crude oil east of the Rocky Mountains and the pipe lines, including the petitioner's, conveying crude oil to refineries, etc., is hereto attached marked "Exhibit C," and to which reference is hereby made for particular description thereof.

That crude oil produced east of the Rocky Mountains is not much used in its natural state, and its market is limited to the refineries of crude oil; that prior to 1906 the business of refining the crude oil and transporting it from the fields of production to the refineries was, to a large extent, transacted under a common management or unified control, the pipe line being called an adjunct of the refinery; that the cost of transportation by means of pipe lines is approximately from 20 to 35 per cent of the cost of transportation by any other instrumentality; that by reason of the premises the producers of crude oil were wholly dependent for the sale of their product upon transportation by pipe lines to the refineries, and by reason of their

location, as herein described, they could not sell or dispose of their said product except to the refineries controlling pipe lines; and that
42 by means of the monopoly of said pipe lines the refineries were able to, and did, unlawfully control the output and arbitrarily fix the price of crude oil at the points of production; that the combining of the business of transporting crude oil with the business of refining the same tended to, and did, create a monopoly and an unreasonable restraint of trade, and subjected the producers of crude oil, and the consumers of the refined products thereof, to great and unreasonable burdens and restraints in their trade, and was and is injurious to the public.

That by reason of the manner of conducting the business of transportation aforesaid, the inability of and the prohibition upon the producers of crude oil to have their oil transported by pipe lines as common carriers, and to select the refinery and markets to which they would ship, the State of Kansas, by legislative enactment approved February 28, 1905 (chap. 315, Secs. 1 and 2), declared that all pipe-line companies transporting crude oil should be common carriers; and the Department of the Interior in December, 1906, by said regulation duly promulgated and published, required all companies obtaining rights of way for pipe lines through Indian lands to be common carriers.

That in the exercise of its plenary power to regulate interstate commerce for the public welfare, and to prevent said unlawful monopoly of crude oil, the Congress of the United States, by acts approved June 29, 1906, and June 18, 1910, declared that any person or persons, firms, or corporations, engaged in interstate commerce "shall be considered
43 and held to be common carriers within the meaning and purpose of" the said act to regulate commerce.

This respondent alleges that by reason of the premises and the acts of Congress aforesaid, the petitioner, so long as it engages in interstate transportation of oil by pipe lines, is a common carrier subject to the said act to regulate commerce as amended.

VIII.

This respondent denies each and every allegation in said petition contained, to the effect that the ability of the petitioner to carry the oil which it produces in the Mid-Continent field will be unlawfully interfered with by segregating its transportation business from the business of producing and refining crude oil or by full compliance with the order in controversy.

This respondent also denies the allegation that petitioner can not transport crude oil through its pipe line for several owners or shippers or that it can not make rates for such transportation. On the contrary, respondent alleges, in view of the facts aforesaid, that the petitioner, with many other carriers, is sending shipments through connecting pipe lines and delivering single and independent shipments to stations and refineries, at points aforesaid, upon rates fixed

and determined therefor, and that the segregation of such shipments and making separate rates and charges therefore is practicable and of daily occurrence.

44 This defendant further denies each and every allegation in said petition contained to the effect or in substance that a compliance with said order will operate to deprive the petitioner of its property without due process of law, or that it will in any degree confiscate or take the property of the petitioner for public uses without due compensation, or that it will in any manner whatsoever deprive the petitioner of its constitutional rights, or any of them, guaranteed by the Constitution of the United States.

And this respondent alleges that in the exercise of its sovereign power over the subject of interstate commerce, Congress may prohibit or in any manner whatsoever regulate such interstate commerce, and all persons, firms, or corporations, while not compelled to engage in such interstate commerce, are, when so engaged, in duty bound to observe and conform to all laws and regulations, for the conduct of such interstate commerce, prescribed by Congress or by this respondent under the act to regulate commerce.

This respondent denies that this honorable court has jurisdiction to review or determine the wisdom or expediency of an act of the Congress of the United States involving public policy or public welfare in the regulation of any interstate commerce, as prayed in said petition; and this respondent avers that its findings of fact and its determination, set forth in said report and order, are binding and conclusive upon the petitioner and all others concerned therein.

45 All of which matters and things this respondent is ready to aver, maintain, and prove, as this honorable court shall direct and prays the same advantage as to each and all the matters and things aforesaid as this respondent would be entitled to if the same were specially pleaded or set forth by way of demurrer or motion to dismiss the petition.

And having fully answered said petition, this respondent prays to be hence dismissed, with its reasonable costs and charges in its behalf sustained.

Interstate Commerce Commission,
By Charles W. Needham, Its Solicitor.

City of Washington, District of Columbia, ss:

Charles A. Prouty, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true as to the matters within the knowledge of the commission, and as to the other matters he believes it to be true.

(Signed) Charles A. Prouty.

Subscribed and sworn to before me, George B. McGinty, a notary public within and for the District of Columbia, this 4th day of September, 1912.

(Seal) George B. McGinty, Notary Public.

IN THE UNITED STATES COMMERCE COURT.

No. 76.

The Uncle Sam Oil Company, Petitioner,

v.

United States of America, Respondent.

ANSWER OF THE UNITED STATES.

Comes now the United States of America by its counsel and for answer to the petition filed herein against it says:

I. Answering Paragraph I of the petition, this respondent admits that the petitioner is a corporation and that it is authorized and empowered to transport oil by means of pipe lines. Respondent denies that petitioner is a private mining and manufacturing corporation and denies that the petitioner is doing a private business. Respondent alleges that the petitioner is authorized and empowered by its charter to transport oil by pipe lines in interstate commerce for any person, firm, or corporation tendering the same for such transportation. As to the other matters and things alleged in Paragraph I of the petition, this respondent has no knowledge, and it neither admits nor denies the same, and if the same becomes material upon the hearing, it will require strict proof thereof.

II. Answering Paragraph II of the petition, this respondent denies the same and each and every part of the same.

III. Answering Paragraph III of the petition, this respondent admits that the petitioner owns and operates a crude-oil refinery near the City of Cherryville, in the State of Kansas, and has drilled and operated many oil wells on its leased lands in the Osage Indian Reservation. Respondent also admits that the petitioner has erected storage tanks at its stations in the States of Kansas, Oklahoma, and Missouri. Respondent admits that the petitioner has constructed and now owns and operates a pipe line extending from the oil fields near the City of Bartlesville, in the State of Oklahoma, to its refinery near the City of Cherryville, in the State of Kansas, and has connected its oil wells with pipe line by smaller gathering lines in the oil field. Respondent admits that since the year 1906 the petitioner has operated said pipe line from the fields in Oklahoma to its refinery in Kansas. As to the other matters and things alleged in said Paragraph III, this respondent has no knowledge, and it neither admits nor denies the same; and if the same becomes material upon the hearing it will require strict proof thereof.

IV. Answering Paragraph IV of the petition, this respondent says that in using the said pipe line for the sole and exclusive purpose of conducting and gathering its own oil from the wells to its refinery the petitioner has been and is acting illegally and unlawfully. Respondent alleges that as to such use

of said pipe line being necessary to the petitioner's business, the petitioner has constructed, owned, and employed, or has endeavored to construct, own, and employ its pipe lines, pumping stations, and delivery facilities, and equipment of every kind in the transportation of crude petroleum in order to make it appear that the same are essential and necessary in the conduct and prosecution of its own business and to carry on the business of a common carrier by pipe line and at the same time evade the obligations of the statutes in such cases made and provided relating to pipe lines. Respondent is informed and believes and upon such information and belief it charges, that any such alleged use of the said pipe line has been undertaken and is sought to be maintained for the purpose of evading and in violation of the statutes relating to pipe lines. Respondent has no knowledge that petitioner has never transported any oil for any other person, firm, or corporation and has never been requested to transport any oil for others from Bartlesville to Cherryville or vice versa, and it neither admits nor denies the same, and if the same becomes material upon the hearing it will require strict proof thereof. Respondent has no knowledge that the market price for crude oil has remained the same at Bartlesville as at Cherryville, and it neither admits nor denies the same, and if the same becomes material upon the hearing it will require strict proof thereof. Respondent denies that there has been and now is no reason why any person other than petitioner should desire to transport any

crude oil from Bartlesville to Cherryville or from Cherryville to Bartlesville. Respondent has no knowledge that there is no refinery for refining crude oil at Cherryville except the refinery of the petitioner, and it neither admits nor denies the same, and if the same becomes material upon the hearing it will require strict proof thereof. Respondent admits that the refinery of the petitioner is supplied from the wells through the pipe line of the petitioner.

V. Answering Paragraph V of the petition, this respondent has no knowledge that the petitioner has at no time held itself out to the public as willing to carry oil for the public by means of said pipe line, nor that it was willing to assume the duties and obligations of a common carrier, and if the same becomes material upon the hearing, it will require strict proof thereof. Respondent denies that petitioner has no power to engage in the business of a common carrier and that it has no facilities for receiving, storing, transporting, and delivering to another any oil that might be tendered for shipment, and alleges that the petitioner is fully authorized and empowered to engage in the business of a common carrier of crude oil by pipe line and is obligated so to do by the statutes of the States of Oklahoma and Kansas through which its said pipe line is operated and by the act of Congress in such case made and provided; and further alleges that the facilities for receiving, storing, transporting, and delivering crude oil which the petitioner now has are sufficient for the receiving, storing, transporting, and delivering

of any oil that may be tendered to the petitioner for that purpose. Respondent denies that the oil of the oil field in which the petitioner operates is of such different grades, quality, and value as that petitioner has no means whereby it could receive, store, transport, and deliver to another the same oil that should be tendered for transportation, and respondent alleges that in receiving, storing, transporting, and delivering crude oil from the said fields the petitioner would not be required to receive, store, transport, and deliver the same in any manner other or different than it now receives, stores, transports, and delivers its own oil. Respondent denies that it is physically impossible for petitioner to assume the duties and responsibilities of a common carrier to receive, store, transport, and deliver to the consignee or the owner the same oil which may be tendered for shipment.

VI. Answering Paragraph VI of the petition, this respondent denies that the transaction whereby petitioner produces the crude oil at the wells, gathers it from the wells, and pumps to its refinery, is a transaction wholly within the petitioner. Respondent is informed and believes, and upon such information and belief it charges, that any such alleged use of the said pipe line has been undertaken and is sought to be maintained for the purpose of evading and in violation of the statutes relating to pipe lines. Respondent denies that there is no other person concerned with it and no element of commerce in it; and denies that it is purely a private transaction; and denies that it does not come under the jurisdiction of the Inter-

state Commerce Commission; and denies that there is no law giving such commission any right or authority to interfere with or molest the petitioner in the use of said pipe line in the conduct of the petitioner's business, and denies that the petitioner's business is a private business. Respondent admits that the petitioner is the owner of said pipe line, but respondent denies that the petitioner has the right under the Constitution and laws of the United States to use, or to continue to use, the said pipe line in manner and form as in the petition alleged, without regulation thereof by the Interstate Commerce Commission. Respondent alleges that in receiving, storing, transporting, and delivering crude oil for persons tendering the same for such purposes, the petitioner is entitled to collect reasonable rates and charges therefor, according to law, and such use of the same would not be an interference of the petitioner with its proper ownership and operation of said pipe lines.

VII. Answering Paragraph VII of the petition, this respondent denies the same, and each and every part of the same.

VIII-IX. Answering Paragraphs VIII and IX of the petition, this respondent admits the same, and each and every part of the same.

X. Answering Paragraph X of the petition, this respondent admits that the petitioner has not now and never has had any schedules of rates and charges for the transportation of oil, but as to whether the petitioner never transported or offered to transport

any oil other than its own oil, respondent has no knowledge, and it neither admits nor denies the same, and if the same becomes material upon the hearing it will require strict proof thereof. This respondent alleges that it is immaterial for what purposes other than the transportation of oil by pipe line the incorporation of the petitioner was procured or its stock subscribed and sold; and further alleges that the charter of the petitioner expressly confers upon it the authority and power to receive, store, transport, and deliver crude oil, and that a compliance with the order of the Interstate Commerce Commission, sought to be annulled and enjoined, is within the authority and power of the petitioner, and that a refusal to comply with the order of the Interstate Commerce Commission is a definance of the said order and the failure to execute the authority and power conferred upon the petitioner by its charter. Respondent alleges that a compliance with the order of the Interstate Commerce Commission by the petitioner, through its stockholders and directors and its managing officers, is not, and could not, in any manner be a diversion of the property of the petitioner or any part thereof, as is alleged, or as is sought to be alleged, in the petition, but would be a compliance with the laws of the land. Respondent denies that the pipe lines of the petitioner, or any part thereof, can not be employed in the transportation of oil for the public or any other person without impairment and destruction of the value of the same to the owner, as is alleged in the petition, and alleges that the pipe

lines of the petitioner, and each and every part of the same, may be employed in the transportation of oil for the public, or any person, upon the payment of reasonable rates and charges therefor, without the impairment and destruction of the value of the same to the owner, or the impairment and destruction of the business of the petitioner, or any part of the same. And this respondent denies that the order of the Interstate Commerce Commission, referred to and set out in Exhibit A to the petition, is illegal and void for the reasons set forth and alleged in the petition. Respondent alleges that the Interstate Commerce Commission had and has full and complete jurisdiction and control over the petitioner in its ownership and operation of its pipe lines. Respondent denies that by its said order the Interstate Commerce Commission will, without the consent of the petitioner, deprive it of its property and the use and control thereof without due process of law in violation of the fourteenth amendment to the Constitution of the United States. Respondent denies that the order of the Interstate Commerce Commission, should the same be enforced and become effective, would render the pipe lines of the petitioner ineffective and inefficient, and would appropriate the said pipe lines to the service of the public to the exclusion of the use thereof by the owner, and denies that should said order be enforced and become effective, it would be the taking of private property of the petitioner for the public use without just com-

pensation in violation of the fifth amendment to the Constitution of the United States.

XI. Answering Paragraph XI of the petition, this respondent has no knowledge that if the said order is allowed to become effective that many suits for penalties are liable to be brought against petitioner by persons interested in said order and its enforcement and claiming to be injured by the acts of the petitioner, and that the petitioner would be subjected to a great multiplicity of suits, and that any loss and damage would be inflicted upon it, and it neither admits nor denies the same and if the same becomes material upon the hearing it will require strict proof thereof. Respondent denies that if said order is allowed to become effective, that the petitioner will be greatly injured and embarrassed in the transaction of its business. Respondent denies that if the said order becomes effective that the petitioner will be deprived of the use and enjoyment of its private property or that the petitioner will suffer any injury through the impairment and destruction of its ability to carry on its business as alleged in said paragraph.

XII. Answering Paragraph XII of the petition, this respondent admits that the Interstate Commerce Commission maintains and intends to maintain and will, unless the said order is enjoined or suspended by the order of the court, maintain the said order as an effective order, and will institute or suffer to be instituted judicial proceedings for the enforcement

thereof, but respondent denies that its acts and doings in that behalf are contrary to equity and good conscience and violative of the property rights of the petitioner.

XIII. Further answering the said petition, respondent alleges that the crude oil produced in the United States is described by "fields," and they are known as the Appalachian field, covering parts of the State-, of New York, Pennsylvania, West Virginia, Kentucky, and Tennessee; the Ohio, Indiana, and Illinois fields, covering parts of those States; the Mid-Continent field, herein referred to, covering parts of the States of Kansas and Oklahoma; the Gulf field, covering parts of the States of Louisiana and Texas; and smaller fields in the States of California, Colorado, Wyoming, Michigan, and Missouri. The annual products of crude oil within the United States, as shown by the official statistics for the calendar year 1910 (the last official figures available), were 209,556,048 barrels, of the value of $127,896,328; that of this total production the Mid-Continent field, in and through which the petitioner operates, for the year aforesaid produced 53,157,386 barrels, of the value of $31,974,082, or about one-fourth of the quantity and value of the total production of the United States.

Respondent alleges that the ownership of the stock of crude oil, the acquisition of any oil wells and the production of oil, the contracts with other producers for purchases of oil, and the market and delivery of oil by the petitioner, are all separate and apart from

and do not constitute a part of the transportation of oil by pipe lines.

Respondent further alleges that the buying, selling, and storing of oil produces a profit or occasions a loss independent of pipe-line operations and pipe-line transportation, and that it is entirely within the power of the petitioner, without injury or detriment to its business of buying, selling, and storing oil, and independently thereof, to receive, store, transport by pipe line, and deliver the oil of other persons, firms, and corporations tendering the same for such purposes.

Respondent alleges that the methods of arranging the operations of a pipe line as a common carrier would be affected only by the degree of uniformity in the quality of the oil placed in the pipes by the various shippers; that if the oil of different shippers is practically uniform in quality, shippers would ordinarily be willing to turn their oil directly into the common stock and to receive at destination an average mixture; if, on the other hand, the oils from different wells or from different small pools of a field vary widely in quality, two different methods might be pursued; that is to say, the pipe line company might keep shipments of different qualities separate, or an arrangement might be made for differentials in value of the different grades, so that a shipper putting a given grade of oil into the pipe line and receiving at destination an oil of different quality would either pay to or receive from the pipe-line company a

sum representing the difference in value. Respondent alleges that if the oil of the Mid-Continent field is of a quality that for purchasing, transporting, and selling the same it must be kept separate and apart from other grades of oil, that the petitioner would be compelled to transport the oil in that manner for itself, and in discharging its duties and obligations as a common carrier it would not be obliged to transport the oil of other persons, firms, and corporations in any manner other or different than it transports oil for itself.

Respondent alleges that the Texas Co., a corporation, the largest oil company in the United States excepting the Standard Oil Co. and its constituent companies, owns and operates a system of pipe lines from the Mid-Continent field southward to points in the State of Texas and on the Gulf of Mexico, and is acting as a common carrier of oil by pipe line in interstate commerce, and has published and filed tariffs in compliance with the act of Congress in such case made and provided, and is receiving, transporting, and delivering oils of various grades and qualities through the same pipe without any material mixture when reasonable care is taken, and that it is entirely practicable so to do.

Respondent alleges that the Gulf Pipe Line Co., which operates a pipe line extending from the Mid-Continent field, in the State of Oklahoma southward to Port Arthur, in the State of Texas, is acting as a common carrier of oil by pipe line in interstate commerce, and has published and filed tariffs in com-

pliance with the act of Congress in such case made and provided, and is receiving and transporting oil through the same pipe and making deliveries of a like quantity of a like quality of oil so received, and that it is entirely practicable so to do.

Respondent alleges that there are other persons, firms, and corporations in certain of the States east of the Mississippi River acting as common carriers of oil by pipe line in interstate commerce, and have published and filed tariffs in compliance with the act of Congress in such case made and provided, and are receiving, transporting and delivering oils through the same pipe in manner and form as the Texas Co. and the Gulf Pipe Line Co. are doing, and that it is entirely practicable so to do.

Respondent alleges that the petitioner is combining the business of producing and purchasing crude oil and the refining thereof and the sale of the refined products with the business of transporting the same by pipe line in interstate commerce, which results in a natural tendency to prefer and discriminate, and in thus combining the business of producing, purchasing, and refining crude oil and selling the refined products with the business of transporting the same by pipe line in interstate commerce, and its refusal to divorce the business of transporting crude oil in interstate commerce from the production, ownership, and refining thereof, and thus to avoid the natural tendency to prefer and discriminate, the petitioner is enabled effectively to and it does control the production and sale of crude oil and the transportation

thereof through and from the Mid-Continent field and the sale of the refined products, to the great prejudice and disadvantage of other producers of crude oil in the Mid-Continent field, who are without any outlet or market for their product except through the petitioner. In failing to publish and file its tariffs of rates and charges and to receive and transport crude oil for the producers of the Mid-Continent field in accordance therewith, upon equal terms and conditions with it and with each other, petitioner is enabled to and does compel such producers in the Mid-Continent field to sell the crude oil produced by them to the petitioner, who has the advantage of a pipe line, at such prices as the petitioner may dictate and upon such terms and conditions as it may impose, and in so doing the petitioner is making and will continue to make undue preferences and unjust discriminations in favor of and against communities and persons in the Mid-Continent field, and is making and will continue to make undue preferences in favor of itself as a producer and refiner of oil and unjust discriminations against other producers of crude oil. In thus combining the business of producing, purchasing, and refining crude oil and selling the refined products thereof with the business of transporting the same by pipe line in interstate commerce, and its refusal to divorce the business of transporting crude oil by the pipe line in interstate commerce from the production, ownership, and refining thereof, petitioner is enabled to and does carry on the business

of a common carrier in interstate commerce to the great preference and advantage to itself as a purchaser, shipper, and refiner of oil to the exclusion of and unjust discrimination against others and, as such, and in so doing, is violating the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and the various acts amendatory thereof and supplementary thereto, and as such is avoiding regulation by the Interstate Commerce Commission.

Respondent alleges that in the year 1905 the Legislature of the State of Kansas passed an act relating to the transportation of oil by means of pipe lines whereby the public policy of the State of Kansas in this behalf was declared and became established, which said act provided that "all pipe lines laid, built, or maintained for the conveyance of crude oil within the State of Kansas are hereby declared to be common carriers and said conveyance of said oil shall be in the manner and under the restrictions in this act provided." Said act further provided, inter alia, that it shall be the duty of every person, firm, or association operating under such pipe line to provide suitable and necessary receptacles for receiving such oil for transportation and for storage at the place of delivery, and to receive and transport oil by pipe line at rates and charges not to exceed those specified in the said act. Petitioner is subject to the provisions of the said act and each and every part of the same, the contents of which are fully known to it, and

respondent prays leave to refer to the same upon the hearing hereof.

Respondent further alleges that in the year 1909 the Legislature of the State of Oklahoma passed an act relating to the transportation of oil by means of pipe lines, whereby the public policy of the State of Oklahoma in this behalf was declared and became established, which said act provides that "every corporation, joint stock company, limited copartnership, partnership or other person, now or hereafter engaged in the business of carrying or transporting crude oil, or petroleum, or any of the products thereof, for hire or compensation or otherwise, by pipe line or pipe lines, within this State, and by virtue of and in conformity to, any valid law incapable of revocation by any law of this State or of the United States, or by virtue of and in conformity to the provisions of this Act, shall be a common carrier thereof as at common law, and no such common carrier shall allow or be guilty of any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage, or delivery of any crude, stock, or storage oil, or any products thereof, in its possession or control, or in which it may be interested, directly or indirectly." Under and by virtue of the provisions of the said act, and for the purpose of acquiring necessary right of way, pipe-line companies are granted the right of condemnation by eminent domain, and the use of the highways in the State, for the purpose of transporting petroleum

by pipe lines, and the location, laying, construction, maintaining, and operation thereof. Corporations of other States or Territories, or of the United States, otherwise admissible to do business in the State of Oklahoma, may get the benefit of said act upon compliance with the laws and constitution of the State of Oklahoma. Petitioner is not organized under the laws of the State of Oklahoma, and as a foreign corporation doing business in said State is subject to the provisions of the said act and each and every part of the same, and respondent prays leave to refer to said act upon the hearing hereof.

Respondent alleges that pursuant to an act of Congress of the United States, approved March 11, 1904, relating to the granting of rights of way for pipe lines pumping stations, and storage tanks, and their construction, operation, and maintenance in connection with the transportation and storage of oil, when such lands are situated in Oklahoma and the Indian Territory, the Secretary of the Interior did promulgate certain rules and regulations for the granting of rights of way to pipe-line companies, wherein and whereby the public policy of the United States in this behalf was declared and became established, which said rules and regulations were in force from December 21, 1906, to and including June 10, 1909, and were, in part, in words and figures following, viz., "and no application for the construction of a pipe line will be approved unless the applicant agrees that such pipe line shall be held to be a

common carrier and agrees to all of the provisions hereof. * * * The approval of any application for oil-pipe lines and other privileges is on the consideration that the permittees thereof shall accept and deliver shipments of oil at any regular station on their line." Petitioner herein duly made application to the Secretary of the Interior for a right of way for its pipe line over Indian lands from Bartlesville, then in the Indian Territory, to a point at or near Caney, Kansas, a distance of about 25 miles, and which constitutes a part of the trunk pipe line of the petitioner; that said application was made under and in pursuance of the provisions of the said act of Congress and the said regulations of the Secretary of the Interior, and was accompanied with maps showing the proposed pipe line, and such other evidence as the Secretary of the Interior required before acting upon such application. On or about January 31, 1907, the Secretary of the Interior granted said application in pursuance of the said act of Congress and the said regulations, and the petitioner accepted the grant of a right of way thereunder and constructed a part of its pipe line thereover and is now operating the same. Petitioner is a common carrier engaged in the transportation of crude oil by pipe line in interstate commerce, and by reason of its acts aforesaid is estopped from divesting itself, or attempting to divest itself, of its obligations and duties as a common carrier, and is estopped from denying, or seeking to deny, that it is a common carrier.

Respondent alleges that at the hearing in the proceeding entitled, "In the Matter of Pipe Lines No. 4199," the matters and things in the foregoing answer by this respondent alleged were made fully to appear to and were before the Interstate Commerce Commission in the inquiry then being conducted in the said proceeding.

Respondent alleges that as shown by Exhibit A attached to the petition, complaint was made to the Interstate Commerce Commission that a large number of common carriers by pipe line, of which the petitioner was one, had established certain rates, classifications, and regulations which were unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of the act to regulate commerce and the acts amendatory thereof and supplementary thereto, and that the practices of said common carriers, and each of them, in the conduct of business and subject to said act were unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of said act, and that by reason thereof the commission instituted an inquiry on its own motion and inquired into the matters and things complained of; that after a full hearing the commission notified and required but 12 of the said large number of companies to file with the commission schedules of their rates and charges for the transportation of oil in compliance with the provisions of the act to regulate commerce. Respondent alleges

that of the said 12 companies, 7 thereof have filed petitions seeking to attack the order of the commission in question; the 5 remaining companies are engaged extensively in mining, producing, purchasing, selling, transporting by pipe line and delivering crude oil from one State to another, and are thus engaged in interstate commerce. They and each of them are named as parties to the order of the Interstate Commerce Commission, and are by it directed to file their schedules of rates and charges for the transportation of crude oil in compliance with the provisions of the act to regulate commerce. None of said 5 companies has filed a petition in this court to set aside and annul the said order or for an injunction against the same. This respondent is informed and believes, and upon such information and belief it charges, that each of the said 5 remaining companies in said order named is undertaking to comply with the provisions of the said order, and will comply with the provisions thereof if the said order is allowed to remain in force and effect, and will submit itself to the provisions of the act to regulate commerce and to regulation by the Interstate Commerce Commission. Respondent is informed and believes, and upon such information and belief it charges, that if a temporary restraining order is issued herein, or if the said order of the commission is finally annulled and enjoined, many of the other companies investigated by the commission which are complying with the provisions of the act to regulate commerce

in such a way as not to require further present action on the part of the commission, and the other 5 companies named in the order of the commission which have not filed petitions herein, or some of them, will attempt to divest themselves of their obligations and duties as common carriers by pipe lines and avoid regulation as such, and that much chaos and confusion will result, to the great prejudice and disadvantage of the producers, shippers, and refiners of crude oil throughout various States of the United States.

Respondent alleges that the Congress of the United States, in pursuance of its power to regulate commerce, by an act entitled "An act to regulate commerce," approved February 4, 1887, as amended June 29, 1906, whereby the public policy of the United States of America in this behalf was declared and became established, enacted "that the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, * * * who shall be considered and held to be common carriers within the meaning and purpose of this act."

Respondent further alleges that The Uncle Sam Oil Company, a corporation engaged in the transportation of oil by means of pipe lines in interstate commerce, has refused, and is now refusing, to com-

ly with the provisions of the said act to regulate commerce, in defiance of the provisions of the said act and in defiance of the order of the Interstate Commerce Commission, and that the failure of The Uncle Sam Oil Company to comply with the provisions of the act to regulate commerce, as directed by the order of the Interstate Commerce Commission, is inimical to the general welfare of of the people of the United States, contrary to law, and contrary to the public policy of the United States as declared and established by the Congress.

And this respondent denies each and every allegation in the said petition contained not herein specifically admitted, denied, or otherwise traversed.

Wherefore, having fully answered, this respondent prays that the petition be dismissed at the cost of the petitioner.

Blackburn Esterline,
Special Assistant to the Attorney General.

United States of America,
District of Columbia, ss:

Blackburn Esterline, being duly sworn, says that he is special assistant to the Attorney General of the United States and that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes them to be true. He further states that he is authorized to sign the

said answer for the United States of America, the respondent in the said cause, by the Attorney General of the United States.

Blackburn Esterline.

Subscribed and sworn to before me this 16th day of September, A. D. 1912.

[Seal.] J. H. Mackey,
Notary Public, District of Columbia.

84 In the United States Commerce Court.

No. 76.

The Uncle Sam Oil Company, petitioner,

v.

United States of America, respondent.

Order.

(Entered October 17, 1912.)

Upon motion of counsel for the United States, the respondent consenting,

It is ordered, that leave be, and the same is hereby, granted the United States to file its amended answer herein forthwith, and the same is filed.

Martin A Knapp,
Presiding Judge.

IN THE UNITED STATES COMMERCE COURT.

No. 76.

The Uncle Sam Oil Company, petitioner,

v.

United States of America, respondent.

AMENDED ANSWER OF THE UNITED STATES.

Comes now the United States of America by its counsel and for amended answer to the petition filed herein says:

I. As to the purposes, character, and legal powers of the petitioner corporation, respondent refers to the charter thereof, and to the laws—Federal, State and Territorial—to which it has been and is subject.

II. Respondent denies that there would be no demand for the services of the petitioner as a common carrier.

III. While it is true that oils of varying grades can not be coincidently transported through pipe lines without some intermixture, it nevertheless is practicable, even with the facilities now possessed by the petitioner (or with slight modifications thereof) to keep the said oils so nearly separate and distinct during transit as to satisfy the practical requirements of the trade.

IV. It is also physically possible for the petitioner, even with its present facilities, to conduct the business of a common carrier of oil in a manner similar to that in which the business of elevating grain and in transportation the substitution of tonnage in transit are conducted; and so conducted the service would conform, or could readily be made to conform, to the practical commercial requirements of the trade.

V. Respondent denies that the act of Congress or the order of the commission, if allowed to become effective as against the petitioner, would compel the petitioner to close its refinery, or would injure its ability to compete with the Standard Oil Company.

VI. On February 16, 1906, the petitioner made application to the Secretary of the Interior for a right of way for the portion of its pipe line which lay within what is now the State of Oklahoma and was then the Indian Territory.

On March 26, 1906, this application was approved by the First Assistant Secretary of the Interior Department.

On December 21, 1906, there was promulgated and went into effect certain rules and regulations relating to the granting of rights of way for a pipe line, pumping station, storage tanks, and for their construction, etc., in Oklahoma and the Indian Territory, and in said rules and regulations it was provided, among other things, as follows:

> * * * and no application for the construction of a pipe line will be approved unless the applicant agrees that such pipe line shall be

held to be a common carrier and agrees to all of the provisions hereof. * * * The approval of any application for oil-pipe lines and other privileges is on the consideration that the permittees thereof shall accept and deliver shipments of oil at any regular station on their line.

After the said promulgation and going into effect of the said rules and regulations, the petitioner did, on January 21, 1907, file an application with the Secretary of the Interior for the approval of a new map therewith filed, which contained some variations of the line from the former map.

On January 31, 1907, this application was granted by the Department of the Interior, in accordance with the following letter dated January 31, 1907, addressed by the chief clerk of that department to the vice president of the petitioner:

J. H. Ritchie, Esq.,

Vice president The Uncle Sam Oil Company, Bartlesville, Indian Territory.

Sir: You are advised that the First Assistant Secretary of the Interior on January 23, 1907, in accordance with the recommendation of this office, approved the map filed by you in this office with your letter of January 21, 1907, showing the actual location of the pipe line, right of way for which was approved on March 26, and November 17, 1906, pursuant to the provisions of the act of Congress of March 11, 1904 (33 Stat. L., 65), the regulations of December 21, 1906 (copy inclosed), and subject

also to any prior, valid existing rights and adverse claims.

Very respectfully,

Frank M. Conser,
Chief Clerk.

VII. The facts stated in the report of the commission are true, and were found by due process of law.

VIII. Except as hereinabove denied or qualified, the allegations of the petition are admitted for the purposes of this case.

Winfred T. Denison,
Assistant Attorney General.

United States of America,
District of Columbia, ss:

Winfred T. Denison, being duly sworn, says that he is an Assistant Attorney General of the United States, that he has read the foregoing amended answer and knows the contents thereof, and that to the best of his information and belief the allegations therein made are true.

Winfred T. Denison.

Subscribed and sworn to before me this 14th day of October, 1912.

[Seal.]

Elizabeth Wright,
Notary Public, D. C.

89 In the United States Commerce Court.

Docket No. 76.

The Uncle Sam Oil Company, petitioner,

vs.

The United States, respondent.

Affidavit of H. H. Tucker, jr.

(Filed October 21, 1912.)

State of Kansas, Wyandotte County, ss:

H. H. Tucker, jr., of lawful age, upon his oath, says that he is president of the petitioner, and that during the years of 1905, 1906, and 1907 he was a director and secretary, treasurer, and general manager; that the matter of procuring the right of way for the pipe line mentioned in the answers of the respondents was in the charge of J. H. Ritchie; that the application for said right of way was made in February, 1906, and approved [illegible] by the department and the pipe line fully constructed thereunder and in full operation on and before the 16th day of November, 1906; that affiant has no recollection of ever hearing that there was any claim or pretence that petitioner would be compelled to become a common carrier on account of having applied for and accepted said right of way, and that petitioner never at any time agreed to accept said right of way on such terms; affiant has read the petition in this proceeding and knows the contents thereof and that the facts stated therein are true.

H. H. Tucker, Jr.

Subscribed and sworn to before me this 15th day of October, 1912.

(Seal) A. F. Goebel,

Notery Public, Wyandotte County, Kansas.

My commission expires on the 9 day of October, 1915.

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90 In the Commerce Court of the United States.

Docket No. 76.

The Uncle Sam Oil Company, petitioner,

vs.

The United States, respondent.

Affidavit of J. H. Ritchie.

(Filed October 21, 1912.)

State of Kansas, Wyandotte County, ss:

J. H. Ritchie, of lawful age, being first duly sworn, on his oath says that he is one of the directors and vice president of the petitioner,

The Uncle Sam Oil Company, and has held such positions since the organization of the company in February, 1905; that as such vice president he was in charge of the matter of procuring the right of way for the pipe line over the Indian lands mentioned in the answers of the respondents; that he had sole charge of said matter on behalf of the petitioner and conducted all proceedings therein; that he made the application for said right of way on the 16th day of February, 1906, under the law and rules and regulations then in force; that said application was filed in the Department on February 27th, 1906; that it was recommended for approval March 15th, 1906, and was approved by the honorable Thos. Ryan, First Assistant Secretary of the Interior, on the 26th day of March, 1906, under the law and rules and regulations then in force; that the law and rules then in force did not require the applicant for the right of way to agree that the pipe line should be a common carrier; that said pipe line was constructed upon said right of way so approved and in full operation on the 16th day of November, 1906; that as affiant now recollects the matter, one of the maps of the right of way did not have the field notes of the surveyor attached thereto, although such notes were furnished the department on December 5th, 1906, returned
91 the map to affiant to have the field noted attached thereto; that said map was amended in that particular and returned to the department on January 1, 1906, and was approved January 23rd, 1906; that affiant never had any notice or knowledge of the rules and regulations of the department dated December 21st, 1906, prior to January 1, 1907, when he returned said map to the department, or prior to the approval of said map by the department; that said pipe line was fully laid and in full operation long prior to December 21, 1906, and that it was laid upon the right of way applied for and approved prior thereto; that this affiant and the petitioner never at any time knew that the petitioner was required to agree that said pipe line should become a common carrier and this affiant and the petitioner never at any time consented that said pipe line should become a common carrier or that it would carry oil for any other person; that affiant has read the petition of the petitioner in this proceeding and knows the contents thereof and that the facts stated therein are true.

J. H. Ritchie.

Subscribed and sworn to before me this 15th day of October, 1912.

(Notarial seal.) A. F. Goebel,
Notary Public, Wyandotte County, Kansas.

My commission expires on the 9th day of October, 1915.

92 In the United States Commerce Court.

No. 76.

The Uncle Sam Oil Company, petitioner,

v.

The United States of America, et al., respondents.

Order for completion of the record.

(Entered March 29, 1913.)

It appearing that copies, duly certified by the Interstate Commerce Commission, of the following tariffs of common carrier pipe line companies, namely, (1) The Texas Company Pipe Line Tariff No. 5, I. C. C. No. 5; (2) National Transit Company Joint Tariff, I. C. C. No. 12; and (3) memorandum of the division of rates named in said I. C. C. No. 12, were offered by counsel for the United States at the hearing on the motion for preliminary injunction in the above-entitled cause and were received and considered by this court, but by oversight were not filed with the clerk.

It is ordered, this 29th day of March, 1913, that said certified copies of said tariffs be filed and made a part of the record in the above-entitled cause, nunc pro tunc, as of October 31, 1912.

Martin A. Knapp,
Presiding Judge.

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93 [Charles A. Prouty, chairman; Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, John H. Marble, secretary. In reply address "Interstate Commerce Commission."]

Interstate Commerce Commission, Washington.

I, John H. Marble, secretary of the Interstate Commerce Commission, do hereby certify that the documents hereto attached and more particularly hereinafter described are true copies of schedules lawfully filed with the said Interstate Commerce Commission of dates specified below, to wit:

The Texas Company Pipe-Line Tariff No. 5, I. C. C. No. 5, filed on May 21, 1908.

National Transit Company Joint Tariff, I. C. C. No. 12, filed on September 25, 1908.

Memorandum of the division of rate named in said I. C. C. No. 12, filed on May 28, 1912.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 25th day of October, A. D. 1912.

John H. Marble,
Secretary of the Interstate Commerce Commission.

[Seal of Interstate Commerce Commission.]

Filed March 29, 1913, nunc pro tunc as of October 31, 1912.

94 [T. T. C. No. 5. I. C. C. No. 5, cancelling and superseding I. C. C. Nos. 1, 2, 3, and 4. Received Interstate Commerce Commission, division of rates & transportation. 72055. May 21, 1908.]

The Texas Company Pipe-Line Tariff.

[The rates named by this tariff are for the interstate transportation of crude petroleum by the Texas Company's Oklahoma-Texas trunk pipe line and are subject to the regulations made part hereof and set forth on page 2, and are expressed in cents per barrel of 42 United States gallons.]

From the point in the Glen Pool (Oklahoma) now established for reception of crude petroleum into the Texas Company's trunk line.

To any one of the Texas points named below at the rate indicated in each instance, to wit:

To West Dallas (Texas) Station on said trunk line, at twenty (20) cents per barrel.

To Eleanor (Texas) Station on said trunk line, at twenty (20) cents per barrel.

To Corsicana (Texas) Station on said trunk line, at twenty-five (25) cents per barrel.

To Beaumont (Texas) Station on said trunk line, at thirty-five (35) cents per barrel.

To Port Arthur (Texas) Station on said trunk line, at thirty-seven and one-half (37½) cents per barrel.

Note.—All deliveries at destination to customer's vessels or to customer's tanks connected with the Texas Company's lines will be subject to a further charge of 2½ cents per barrel.

Note.—Upon demand for such appearing the company is prepared to consider proper promulgation of tariffs for intermediate points not covered by this or other tariffs in force.

"Issued under special permission of the Interstate Commerce Commission, No. 5522, of date of May 18, 1908."

Issued May 19, 1908. Effective June 1, 1908.

Subject to change under terms of law.

J. S. Cullinan,
President of the Texas Company, Houston, Texas.

95 The Texas Company.

Regulations.

The Texas Company will undertake interstate transportation of crude petroleum only by its trunk pipe line, receiving and delivering such through its own facilities, and not otherwise, subject to further provisions as follows:

1. Separate pipeage contracts for shipments, in accord with this tariff, and these regulations covering other proper details must be executed by the parties a reasonable time before the duty of transportation arises.

2. Crude petroleum will be received subject to the right and to the consequences of mixing such with and delivering such from common stock only, the minimum gravity at time of its reception for transportation to be 30 degrees Beaum; the usual and proper methods of measurements to apply.

3. Storage incident to and during transportation only is available and can be afforded, and the shipper must provide facilities for receiving the oil at destination.

4. The right to require prepayment or acceptable security for charges is reserved; also satisfactory assurance that the crude petroleum is free from liens and charges and that the shipper has the right to direct its disposition.

5. No limitations are prescribed at this time as to quantities, but reasonable limits will be required by the terms of pipeage contracts, and in the event of tenders in excess of capacities, including outstanding pipeage obligations, the right to reasonably allot and apportion is reserved by the Texas Company, and tender for transportation shall not be good for quantities in excess of such as is already in or available for immediate delivery into the Texas Company's pipe lines at the time of such tender.

6. Patrons may use, without additional charge, the company's private telegraph lines for messages incident to the business, the Texas Company, however, not to be liable for delivery of messages away from its offices nor for delay in transmission nor for interruption of service.

7. All crude petroleum transported under this tariff is subject to further charges for gathering preliminary to receiving the same into the main trunk line, according to the then existing schedule of such charges, which are subject to change and which at present are as follows:

Where the distance is 15 miles or more, 20 cents per barrel.

Where the distance is less than 15 miles but more than 10 miles, 15 cents per barrel.

Where the distance is less than 10 miles, 12½ cents per barrel.

Air-line distance to apply in accord with the Texas Company's field maps. If other delivery is desired, special arrangements must be made, covering additional charge proportionate to the service rendered, in no case to be less than 2½ cents per barrel.

8. In case of fire destroying any oil in the custody of the Texas Company's pipe-line department after oil has been received for transportation and before the same shall have been delivered to the consignee, the shipper shall stand a loss proportionately as the amount held for such shipper bears to all the oil, including its own, in the custody of the Texas Company's pipe-line department at the time of

such fire, and shall be entitled to have delivered only such proportion of such shipment as is left after deducting the proper proportion of the loss, as above, but in such event shall be required to pay carriage charges only on the quantity of oil delivered. Statements of quantities ascertained and computed from the records in the usual manner by the Texas Company shall be accepted as prima facie correct in the adjustment of a loss under this clause.

96 [I. C. C. No. 12. Cancelling and superseding I. C. C. No. 8. Received Interstate Commerce Commission, Division of Rates & Transportation. 125490. Sept. 25, 1908.]

Joint Tariff.

[Two copies to be posted at the receiving station, as required by law.]

National Transit Company, in Connection with South West Pennsylvania Pipe Lines (F X 3 No. 1), the Eureka Pipe Line Company (F X 3 No. 1), and Southern Pipe Line Company (F X 3 No. 1).

The rates named in this tariff are for the transportation of crude petroleum oil by pipe lines, subject to the regulations named within.

From Nedsky, Pa. (via Morgantown, W. Va.), to Fawn Grove, Pa., 32 cts.
Rates per bbl. of 42 gallons.

In addition to said rate, all oil tendered for shipment to Fawn Grove, Pa., at points in Pennsylvania other than Nedsky, Pa., will be subject to a further charge of 20c. per barrel of 42 gallons each, for gathering and transporting the same to Nedsky.

The rates named in this tariff are subject to change at any time upon the National Transit Co. giving the thirty (30) days' notice required by law.

Issued September 23d, 1908. Effective October 28th, 1908.

George Chesebro,
Secretary, National Transit Co., New York, N. Y.

97 [File I. C. C. No. 12.]

Regulations.

This company will receive crude petroleum for interstate transportation only to established delivery stations on its own lines, and lines of connecting pipe line companies, on the following conditions:

First. It will receive crude petroleum for interstate transportation when the shipper has provided the necessary facilities for receiving said petroleum as it arrives at destination.

Second. Orders for the shipment of any specified kind of such crude petroleum shall only become effective when orders from the shipper, in connection with orders from other shippers, for the same kind and quality of petroleum shall amount in the aggregate to seventy-five thousand (75,000) barrels, or more, consigned to the same point of delivery; and subject to this requirement, orders for shipment shall become operative in the order in which they shall have been received.

Third. It will forward such crude petroleum when there has been tendered to it by the shipper, individually, or by him and others, a quantity of the same kind and quality of crude petroleum amounting in the aggregate to not less than seventy-five thousand (75,000) barrels, all of which shall be consigned for delivery to the same delivery point.

Fourth. All such crude petroleum will be accepted for transportation only on condition that it shall be subject to such changes in quality while in transit as may result from the mixture of said petroleum with other petroleum in the pipe lines or tanks of this, or the connecting company, or companies.

Fifth. Crude petroleum will only be accepted for transportation when free from all liens and charges.

Sixth. This company is not engaged in the transportation of refined oil, and will not, therefore, accept the same for transportation.

Seventh. Any patron of this company wishing to send telegrams pertaining to the oil business will be allowed to do so free of charge. This does not include any delivery of telegrams at destination except at the company's office.

98 [Received Interstate Commerce Commission, Division of Tariffs, 34856, May 28, 1912.]

Memorandum of the division of rate named in joint tariff, I. C. C., No. 12, issued by the National Transit Company in connection with South West Pennsylvania Pipe Lines, The Eureka Pipe Line Company, and Southern Pipe Line Company, for the transportation of crude petroleum oil from Nedskey, Pa., to Fawn Grove, Pa., effective June 1, 1912. This memorandum is made in accordance with Conference Ruling No. 209.

The rate given was from Nedskey, Pa., to Fawn Grove, Pa., at 32 cents per barrel of 42 gallons. The division of this rate rests on verbal agreement, and is as follows:

	Cents per barrel of 42 gallons.
The Eureka Pipe Line Company	3.83
South West Pennsylvania Pipe Lines	5.07
Southern Pipe Line Company	19.34
National Transit Company	3.76
Total	32.00

Jos. Ball,
Secretary National Transit Company.

Oil City, Pa., May 27, 1912.

99 Journal entries.

No. 75. The Prairie Oil & Gas Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 76. The Uncle Sam Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 77. Robert D. Benson, et al., petitioners, vs. The United States of America, respondent; Interstate Commerce Commission, et al., interveners.

No. 78. The Ohio Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 79. Standard Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 80. Standard Oil Company of Louisiana, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

Proceedings of October 29, 1912:

It was announced by the court that these causes would be heard together. Thereupon all of said causes came on for hearing upon the
100 applications for a preliminary injunction and No. 75 upon the motion of the United States to dismiss, and the arguments of counsel were commenced, Mr. W. S. Fitzpatrick, Mr. W. I. Lewis, and Mr. John G. Milburn appearing on behalf of the petitioners.

Proceedings of October 30, 1912:

Thereupon all of said causes came on for further hearing upon the applications for a preliminary injunction and No. 75 for further hearing upon the motion of the United States to dismiss, and the arguments of counsel were continued, Mr. John G. Milburn appearing on behalf of the petitioners; Mr. Albert L. Wilson on behalf of the Uncle Sam Oil Company, petitioner in No. 76; Mr. Blackburn Esterline on behalf of the United States; and Mr. Charles W. Needham on behalf of the Interstate Commerce Commission.

Proceedings of October 31, 1912:

Thereupon all of said causes came on for further hearing upon the applications for a preliminary injunction and No. 75 for further hearing upon the motion of the United States to dismiss, and the arguments of counsel were concluded, Mr. Charles W. Needham appearing on behalf of the Interstate Commerce Commission, Mr. Winfred T. Denison, Assistant Attorney General, on behalf of the United States; and Mr. John G. Milburn on behalf of the petitioners. There-

upon counsel for the United States was granted leave to file an affidavit, said affidavit to be first submitted to Mr. Milburn. Mr. Milburn, of
101 counsel for the petitioners, was granted leave to file a brief on monopoly within one week and opposing counsel were given one week thereafter in which to file briefs in reply. Thereupon said causes were taken under advisement by the court.

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160 In the United States Commerce Court.

October session, 1912.

No. 76.

The Uncle Sam Oil Company, petitioner,

v.

The United States of America, respondent; Interstate Commerce Commission, intervener.

Order granting preliminary injunction.

(Filed March 14, 1913.)

This cause came on to be hear[illegible] at this session, and was argued by counsel; and thereupon, upon cons[illegible]ion thereof, it was ordered, adjudged, and decreed as follows, viz:

First. That a preliminary injunction be, and the same is hereby, issued, as prayed for in the petition, against the order of the Interstate Commerce Commission entered June 3rd, 1912, the effective date of the same having been extended to March 15th, 1913, notifying and requiring the petitioner to file with the Interstate Commerce Commission schedules of its rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce, a copy of which order is attached to the petition and made a part thereof; and that the said order and its force and effect be, and the same is hereby suspended, restrained, and enjoined until the further order of the court.

Second. That a duly certified copy of this order be forthwith served by the marshal of this court upon the Attorney General of the United States and the chairman of the Interstate Commerce Commission.

By the Court:

Martin A. Knapp,
Presiding Judge.

161 District of Columbia, ss:

I hereby certify that on the 14th day of March, 1913, I served the within order granting preliminary injunction on the chairman of the Interstate Commerce Commission by leaving a certified copy thereof with Alfred Holmead, assistant secretary.

March 14, 1913.

F. J. Starek, Marshal.

District of Columbia, ss:

I hereby certify that on the 14th day of March, 1913, I served the within order granting preliminary injunction on the Attorney General by leaving a certified copy thereof with Blackburn Esterline.

March 14, 1913.

F. J. Starek, Marshal.

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162 In the United States Commerce Court.

October session, 1912.

No. 76.

The Uncle Sam Oil Company, petitioner,

v.

The United States of America, respondent, and Interstate Commerce Commission, intervening respondent.

Petition for appeal.

(Filed March 22, 1913.)

The United States of America, respondent, and Interstate Commerce Commission, intervening respondent, feeling themselves aggrieved by the interlocutory order or decree of the Commerce Court, entered March 14, 1913, granting a preliminary injunction suspending and enjoining the order of the Interstate Commerce Commission until the further order of the court, by their respective counsel, pray an appeal to the Supreme Court of the United States, in accordance with section 2 of an act entitled "An act to create a Commerce Court," etc., approved June 18, 1910.

The particulars wherein the United States and the Interstate Commerce Commission consider said order or decree erroneous are set forth in the assignment of errors on file, to which reference is made.

And the United States and the Interstate Commerce Commission further pray that a transcript of the record, proceedings, and papers on which the said order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

J. C. McReynolds,
Attorney General of the United States.

Chas. W. Needham,
Solicitor for Interstate Commerce Commission.

Allowed:

Martin A. Knapp,
Presiding Judge of the United States Commerce Court in said cause.

163 In the United States Commerce Court.

October Session, 1912.

No. 76.

The Uncle Sam Oil Company, petitioner,

v.

The United States of America, respondent, and Interstate Commerce Commission, intervening respondent.

Assignment of errors.

(Filed March 22, 1913.)

Come now The United States of America, respondent, and Interstate Commerce Commission, intervening respondent, by their respective counsel and in connection with their application for appeal, file the following assignment of errors on which they will rely upon said appeal to the Supreme Court of the United States from the interlocutory order or decree of the Commerce Court entered March 14, 1913, in the above-entitled cause.

The Commerce Court erred:

I.

In holding and adjudging that the amendment of June 29, 1906, to the act of Congress entitled "An act to regulate commerce," etc., approved February 4, 1887, which provides that "the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, * * * who shall be considered and held to be common carriers within the meaning and purpose of this act * * *," is unconstitutional and void, as in violation of the fifth amendment to the Constitution of the United States.

164 II.

In construing the said amendment of June 29, 1906, relating to pipe lines, as a declaration by Congress that all private pipe line companies doing business in interstate commerce shall become and be common carriers subject to the provisions of the act to regulate commerce, and in not construing the said amendment as a declaration by Congress that the transportation of crude oil in interstate commerce by means of pipe lines should thereafter be carried on only by common carriers subject to the provisions of the act to regulate commerce.

III.

In holding and adjudging that the receiving and storing stations and the market places in the fields of production of crude oil, and the inspecting, grading, measuring, purchasing, and receiving of oil thereat by petitioner does not constitute such public receiving and storing stations public markets for the purchase and sale of crude oil and a part of the transportation thereof in interstate commerce subject to regulation by Congress.

IV.

In holding and adjudging that the construction and operation of pipe lines upon and over the public streets and highways and upon and over the rights of way of common carriers by railroad subject to the act to regulate commerce and transporting interstate traffic through said pipe lines did not subject the said pipe line companies to the regulating power of Congress.

165

V.

In holding and adjudging that the construction and operation of pipe lines over and upon the Indian lands under a permit granted by the Secretary of the Interior did not subject the petition to the regulating power of Congress, and did not render the said petitioner subject, under a declaration of Congress, to the provisions of the act to regulate commerce and regulation by the Interstate Commerce Commission.

VI.

In not holding and adjudging that the ownership and operation of the pipe lines by the petitioner and the manner and form in which the same are used in the purchase, transportation in interstate commerce, and sale of crude oil, and the combining of the business of the transportation of crude oil in interstate commerce with the business of dealing in that commodity, constitute monopoly and monopolistic tendencies, and that Congress has the power to destroy monopoly and to prevent monopolistic tendencies by declaring that the interstate transportation of crude oil by means of pipe lines shall be carried on by common carriers subject to the provisions of the act to regulate commerce.

VII.

In granting the motion for a preliminary injunction and in suspending and restraining the order of the Interstate Commerce Commission entered June 3, 1912, referred to in the petition, and in not denying the said motion, for that (a) the petition of the petitioner does not set forth any cause of action, and is insufficient to

166 warrant the granting of the preliminary injunction or to form the basis for any relief from the said order; (b) nor has the said petitioner shown that there is any equity in the said petition upon which to grant the preliminary injunction or to form the basis for any relief from the said order; (c) nor has the petitioner shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (d) nor has the petitioner shown that in making its said order the Interstate Commerce Commission violated any right of the petitioner protected by the Constitution of the United States or any other right of the said petitioner over which this court may exercise jurisdiction.

Wherefore the United States and the Interstate Commerce Commission pray that the said interlocutory order or decree of the Commerce Court, entered March 14, 1913, be reversed, annulled, and set aside, and that the petition be dismissed, and for such other and further order as may be appropriate.

J. C. McReynolds,
Attorney General of the United States.

Chas. W. Needham,
Solicitor for Interstate Commerce Commission.

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167 In the United States Commerce Court.

October session, 1912.

No. 76.

The Uncle Sam Oil Company, petitioner,

v.

The United States of America, respondent, and Interstate Commerce Commission, intervening respondent.

Order allowing appeal.

(Entered March 22, 1913.)

In the above-entitled cause, the United States of America and the Interstate Commerce Commission having made and filed their petition praying an appeal to the Supreme Court of the United States from the interlocutory order or decree of the Commerce Court, entered March 14, 1913, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided—

It is ordered and decreed, That the said appeal be, and the same is hereby, allowed as prayed and made returnable on the twenty-first day of April, A. D. 1913; and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, papers, and proceedings to the Supreme Court of the United States.

Martin A. Knapp,
Presiding Judge of the United States Commerce Court.

168 United States Commerce Court.

No. 76.

The Uncl Sam Oil Company, petitioner,

vs.

The United Sta' of America, respondent; Interstate Commerce Commission, intervener.

United States of America, ss:

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 167, inclusive) to be a true and complete transcript of the proceedings had and papers filed in the above-entitled cause, as the same appear from the original record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 4th day of April, A. D. 1913.

[Seal.] G. F. Snyder, Clerk.

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169 [Original.]

Citation on appeal.

United States of America, ss:

To The Uncle Sam Oil Company:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court wherein the United State of America and Interstate Commerce Commission are appellants and you are appellee, to show cause, if any there be, why the interlocutory order or decree rendered against the said appellants as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 22d day of March, in the year of our Lord nineteen hundred and thirteen.

Martin A. Knapp,
Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 29th day of Mar., A. D. 1913.

Albert L. Wilson,
Solicitor for Appellee, The Uncle Sam Oil Company.

170 In the Supreme Court of the United States

October term, 1913.

No. 1054.

The United States of America, et al., appellants,
v.
Uncle Sam Oil Company, appellee.

Stipulation.

It is hereby stipulated and agreed, by and between the parties, by their respective solicitors, that the following documents contained in the record need not be printed, viz:

Opinion of the Commerce Court, announced and filed March 11, 1913;

Report of the Interstate Commerce Commission in the proceeding entitled "In the Matter of Pipe Lines, No. 4199";

and that upon the hearing the court and the counsel may refer to and use the printed copies of the said documents and each of them, which have been filed by the appellants in United States of America et al v. The Ohio Oil Company, No. 1012, to all intents and purposes as though printed in the record herein.

Blackburn Esterline,
Special Assistant to the Attorney General for the United States.

Chas. W. Needham,
Solicitor for Interstate Commerce Commission.

Albert L. Wilson,
Solicitor for Uncle Sam Oil Company, Appellee.

(Indorsed:) File No. 23629. Supreme Court U. S. October term, 1912. Term No. 1054. The United States et al., appellants, vs. The Uncle Sam Oil Company. Stipulation to omit part of the record in printing. Filed April 23, 1913.

(Indorsement on cover:) File No. 23629. U. S. Commerce Court. Term No. 1054. The United States of America and Interstate Commerce Commission, appellants, vs. The Uncle Sam Oil Company. Filed April 10th, 1913. File No. 23629.

EXHIBIT "B"

To the Petition for Rehearing

—

No. 507.

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1913.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Appellants,
vs.
THE UNCLE SAM OIL COMPANY, Appellee.

BRIEF ON BEHALF OF THE UNCLE SAM OIL COMPANY, APPELLEE.

ALBERT L. WILSON,
Solicitor for Appellee.

Supreme Court, U. S. Filed Oct. 7, 1913. James H. McKenney, Clerk.

CASES CITED.

	PAGE
Addyston Pipe, etc., Co. v. U. S., 175 U. S. 241	40
Allen v. Sackrider, 37 N. Y. 341	30
6 Amer. & Eng. Enc. of Law, 262, 263, and cases cited	43
Am. & Eng. Enc., 2d Ed., 237, 245	43
10 Am. & Eng. Enc. of Law, 2d Ed., 293, and cases cited	42
Brass v. N. Dakota, 153 U. S. 391	23
Budd v. New York, 143 U. S. 517	23
Cincinnati, I. & W. Ry. v. Connorsville, 170 Ind. 316	35
Columbia Bank v. Okley, 4 Wheaton (U. S.) 235	42
Constitution, 5th Amendment	41
Constitution, Article 1, Section 8	40
Cotting v. Kansas City Stock Yards, 183 U. S. 79	23
Dartmouth College v. Woodward, 4th Wheat. (U. S.) 518	41
8 Federal Statute An., p. 363	40
Gardner v. Newburg, 2 John. Ch. 162	21
Garfield v. U. S., 211 U. S. 249, 29 S. Ct. 62, 53 U. S. (L. Ed.) 168, affirming 30 App. Cases 177	55
Gisbourn v. Hurst, 1 Salk. 249	29
Gloucester Ferry Co. v. Penn., 114 U. S. 203	40
Griffins Case, Chase (U. S.) 364	16
Griffin v. Pipe Lines, 172 Pa. 580	27
Griffin v. Southwest Penn. Pipe Lines, 172 Pa. State 580	35
Hoover v. McChestney, 81 Fed. Rep. 48	42
Ingate v. Christie, 3 Car. & K. 61	29
Interstate Commerce Commission v. B. & O. R. R. Co., 145 U. S. 263	19
Interstate Commerce Commission v. Harriman, 211 U. S. 407, 418	19

INDEX—Continued.

PAGE

Interstate Commerce Commission v. Harriman, 211 U. S. 407, 422 20

Jackson Architectural Iron Works v. Hurlbut, 158 N. Y. 34..... 30

Judson on Interstate Commerce, 2d Ed. (1912), p. 220 ..... 17, 27

La Harpe v. Gas Co., 69 Kan. 97, 76 Pac. 448.. 44

Manufacturers' Ry. Co. v. St. L., I. M. & S. Ry. Co., I. C. C. R. 304..... 28

McCann v. Telephone Co., 69 Kan. 210, 76 Pac. 870, 66 L. R. A. 171..... 44

McKivergan v. Lumber Co., 124 Wis. 60..... 32

Meyers v. Shields, 61 Fed. Rep. 718..... 42

Midland Oil Co. v. Susan Turner, 179 Fed. 74.. 56

Monongahela Nav. Co. v. U. S., 148 U. S. 312, 324 20

Moore on Carriers, p. 20..... 31

Morrill v. Jones, 106 U. S. 466, 1 Supreme Court 423, 27 Ed. 267..... 57

Munn v. Illinois, 94 U. S. 113..... 23

Munn v. Illinois, 94 U. S. 113, 127..... 26

N. H. R. R. Co. v. Interstate Com. Co., 200 U. S. 361 36

Nugent v. Smith, L. R., 1 C. P. 19..... 30

People v. Colorado Central Railroad Co., 42 Fed. 638, at p. 642..... 35

Pumpelly v. Green Bay Co., 13 Wall. 166, 179.. 20

Ratcliffe v. Stock Yards, 74 Kan. 1..... 23

Sinnickson v. Johnson, 17 N. J. L. (2 Harr. 129, 145) 21

Star Grain & Lumber Co. v. Atchison, Topeka & Santa Fe Ry. Co., 71 I. C. C. R. 338.... 36

State v. Kansas Nat. Gas Co., 80 Pac. 962, 71 Kan. 508, 114 Am. State Rep. 507..... 44

SUBJECT INDEX.

Statement of Facts:

(a) Organization of appellee 2

(b) Appellee denied the power to become a common carrier 2

(c) Business of appellee, producing crude oil, transporting it to its refinery, refining and marketing same 2

(d) Appellee forced by railway rates to build pipe line 3

(e) H. H. Rogers managing officer of Standard Oil Company, member of board of directors of railroad demanding freight rate which would prevent appellee from competing with Standard Oil Company 3

(f) Pipe line of appellee wholly within oil field, has been in operation since 1906, and no person has tendered any oil for shipment 4

(g) Pipe line of appellee has been used exclusively for transporting its own oil to its own refinery, and appellee has at no time held itself out as willing to carry oil for the public..... 4

(h) Physically impossible for appellee to act as common carrier of oil..... 5

(i) Transactions of appellee are not Interstate Commerce 8

(j) Pipe line of appellee is necessary plant facility to enable it to compete with Standard Oil Company 9

(k) Order of Interstate Commerce Commission declaring appellee a common carrier violative of Constitution and void 9

INDEX—Continued.

PAGE

E. E. Taenzer & Co. v. C. R. I. & P. Ry. Co., 170 Fed. 240, 248, 249 (C. C. A. 6th Circuit, 1909) 32, 37

U. S. v. Del. & Hudson Co., 213 U. S. 366, 407-8. 20

U. S. v. Germaine, 99 U. S. 510, 9 Federal Statutes Ann. 219 41

U. S. v. Lynah, 188 U. S. 445 20

U. S. v. McMurray, 181 Fed. 723 55

U. S. v. Sioux City Stock Yards, 162 Fed. 556 . . 31

U. S. v. Welch, 217 U. S. 333, 339 20

Van Piper v. Essex Public Road Co., 38 N. J. L. 23 16

Wade v. Lumber Co., 74 Fed. 517 (C. C. A. 5th Circuit, 1896) 16

Wade v. Lutcher & M. Lumber Co., 74 Fed. 517 (C. C. A. 5th Circuit, 1896) 32

Weems Steamboat Co. v. People's Co., 214 U. S. 345 25

Weidenfeld v. Sugar Run R. R. Co., 48 Fed. 615, 617, 618 32

Weidenfeld v. Sugar Run R. R. Co., 48 Fed. 615, 617-18 . . . . . 32, 37

The Wildenfels, 161 Fed. 864 31

Williams v. Judge of the 18th Judicial Court, 45 La. Ann. 1295, 14 South. 57 33

INDEX—Continued.

PAGE

The provisions of the Interstate Commerce Act apply only to common carriers at common law 14

Companies organized under business corporation laws, and which profess to do and are actually doing only a private business, even if it be a transportation business, are not subject to regulation under the Interstate Commerce Act. Such companies lack the essential characteristics of a holding out to the public for general services..... 32

Even companies organized under transportation laws which grant the right of eminent domain and common carrier franchises and impose public duties are not necessarily common carriers within the meaning of the Interstate Commerce Act unless ctually operating as such 35

The transactions of appellee are interstate transactions, but are not interstate commerce, as they do not constitute or involve any dealing between appellee and another. The Constitution does not give the Congress authority to regulate interstate transactions which do not amount to commerce and if the act should be construed to apply to the transactions of appellee it would be unconstitutional 38

The laws of the state of Kansas and the state of Oklahoma, undertaking to make the owners of pipe lines, under certain conditions, common carriers, do not have that effect as to appellee 48

The public policy of the United States or of any state therein cannot be created in violation of the Constitution 50

INDEX—Continued.

PAGE

Appellee has no power to construct or operate a pipe line as a common carrier 51

The acceptance of a right-of-way from the Interior Department does not make the appellee a common carrier 52

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1913.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Appellants,

vs.

THE UNCLE SAM OIL COMPANY, Appellee.

BRIEF AND ARGUMENT ON BEHALF OF THE UNCLE SAM OIL COMPANY, APPELLEE.

No. 1054.

Statement.

The Record, page 1, shows that this action was commenced in the United States Commerce Court by The Uncle Sam Oil Company, Appellee, on July 23, 1912, by filing in said court its petition for an injunction, and that the petition states the following facts (Record, pp. 1 to 8, inclusive):

completed and in full operation on November 16, 1906, upon the right-of-way thus approved. The record does show that a corrected map of the right-of-way thus approved was called for by the Department on December 5, 1906. Said map to have added thereto, as the correction called for, the field notes of the surveyor. This map was returned to the Department with the field notes called for attached, January 1, 1907, and in that form it was approved by the Secretary of the Interior, January 23, 1907, but in the approval of this map the Secretary distinctly states that the application for right-of-way had been approved March 26, 1906. (Record, page 45.)

The record further shows that the rules and regulations of the Interior Department were amended in 1909, and that portion which required the pipe lines to become common carriers was omitted from the rules and all matters touching that question were thereby repealed. (Commerce Court opinion, page 45.) The record does not show that the appellee had any knowledge or notice of the rules and regulations, dated December 21, 1906, when it returned to the Department the map with the field notes of the surveyor attached, but does show that the appellee had no knowledge or notice of the rules and regulations of December 21, 1906, prior to their repeal in 1909, and that said right-of-way was applied for and accepted and said pipe line laid thereon under the law and rules and regulations existing between February 17th and November 16th, 1906, and that appellee at no time had knowledge or notice that it would be required to consent that its pipe line should be a common carrier, and that at no time did it give such consent. (Record, pages 47, 48.)

The petition of the appellee expressly waives an answer under oath. (Record, page 8.) Therefore, the answer of appellants, while verified, could not be used as evidence on the hearing for the temporary injunction. All of the allegations of the petition of the appellee were supported by the affidavits of two witnesses. (Record, pages 47 and 48.) And none of the allegations were denied in any manner except by said answer.

The appellant Interstate Commerce Commission, in its answer (Record, page 10) says: "This respondent neither admits or denies the allegations in said petition to the effect that the petitioner produces or owns all the crude oil which it transports." And appellant The United States makes no denial of said fact in its amended answer (Record, pages 43 to 46, inclusive.) And neither of the answers of appellants controvert the material facts stated in the petition of the appellee. The court, therefore, was bound to assume that the facts stated in the petition of the appellee were true. Finding these facts to be true, the court granted the temporary injunction prayed for, and this appeal is prosecuted by appellants to obtain a reversal of said order.

1. That appellee, The Uncle Sam Oil Company, was duly and legally incorporated as a private corporation under the laws of the Territory of Arizona in February, 1905, for the purpose of producing crude petroleum, transporting it from its oil wells to its refineries, refining and marketing the same, and that ever since said incorporation appellee has been and now is a private mining and manufacturing corporation, existing under the laws of Arizona and doing a private business according to law.

2. That on the date of its said incorporation the law under which it was incorporated prohibited it from constructing or operating any railway, tramway, or other means for transporting persons or property for hire, and specifically provided that appellee should have no power to construct or operate any means for transporting persons or property except such as may lead from the principal works or place of business of appellee to some navigable stream, or to some existing railroad, turnpike, or public highway, and that said law then became and now is a part of the charter of appellee, and thereby appellee has no power to engage in the business of transporting persons or property as a common carrier.

3. That immediately after the date of its incorporation as aforesaid, appellee created, at large expense, one of its refineries for refining crude petroleum, near the city of Cherryvale, in the State of Kansas, and drilled in many oil wells on its leased land in the Osage Indian Reservation, in the State (then Territory) of Oklahoma; that it markets its refined products by establishing distributing stations in the trade centers most accessible to each of its

refineries, at which stations it has erected large storage tanks and equipment, and has tank wagons to make delivery of the products which it ships to said stations by the carload; that it now has about eighty stations in Kansas, Oklahoma and Missouri depending chiefly upon said refinery for their supply of refined oils; that it applied to the Atchison, Topeka & Santa Fe Railway Company, the only railway line extending from the oil wells of appellee to the said refinery of appellee, and demanded that said railway company should transport the oil from the wells to said refinery and at a fair and reasonable rate; that at said time appellee was producing, refining, and marketing its oil in competition with The Standard Oil Company, which company had its vice-president and active manager, H. H. Rogers, and other representatives upon the board of directors of said railway company; that said railway company established a freight rate of 39 cents per barrel on crude petroleum, from the oil wells of appellee, near the city of Bartlesville, Oklahoma, to the refinery of appellee, near the city of Cherryvale, Kansas, a distance of approximately sixty miles, and provided that appellee should provide the tank cars in which such crude oil should be shipped; that the market price of crude oil at that time was only 35 cents per barrel, and the price of refined oil was such as to make said freight rate prohibitive; that it was excessive, unreasonable, and unjust; that appellee could not pay said rate and continue its competition with the Standard Oil Company with the products of said refinery; that to avoid such ruinous freight rate appellee was compelled to and did construct a three-inch pipe line, extending from near its oil wells and near the said

city of Bartlesville, in the State of Oklahoma, to its refinery near the said city of Cherryvale, in the State of Kansas, and connected its said oil wells with said pipe line by smaller gathering lines in the oil field; that since in the year 1906 appellee has operated said pipe line, pumping its own oil from the wells in Oklahoma to its said refinery in Kansas, and supplied said distributing stations from said refinery, and maintained its competition with the Standard Oil Company, in spite of said freight rate.

4. That during all of the time since constructing said pipe line, appellee has used the same for the sole and exclusive purpose of conducting or gathering its own oil from the wells to its refinery, and such use has been necessary; that appellee has never transported any oil for any other person, firm, or corporation; that appellee during all of said time has never been requested to transport any oil for others from Bartlesville to Cherryvale or *vice versa;* that the market price for crude oil has remained the same at Bartlesville as at Cherryvale, and there has been and now is no reason why any person, other than appellee, should desire to transport any crude oil from Bartlesville to Cherryvale or from Cherryvale to Bartlesville; that there is no refinery for refining crude oil at Cherryvale except said refinery of appellee, and it is supplied from the wells through said pipe line.

5. That appellee has at no time held itself out to the public as willing to carry oil for the public by means of said pipe line, nor that it was willing to assume the duties and obligations of a common carrier; that appellee has no power to engage in the business of a common carrier; that it has no facili-

ties for receiving, storing, transporting, and delivering to another, any oil that might be tendered for shipment; that the oil in that oil field is of different grades, quality and value, and appellee has no means whereby it could receive, store, transport, and deliver to another the same oil that should be tendered for transportation; that under these conditions it is physically impossible for appellee to assume the duties and responsibilities of a common carrier to receive, store, transport, and deliver to the consignee or owner the same oil which may be tendered for shipment.

6. That the transaction whereby appellee produces the crude oil at the wells, gathers it from the wells, and pumps it to its refinery as above stated, is a transaction wholly within appellee; that there is no other person concerned with it and no element of commerce in it; that it is purely a private transaction, and does not come under the jurisdiction of the Interstate Commerce Commission; that there is no law giving said Commission any right or authority to interfere with or molest appellee in the free use of its said pipe line in the conduct of its said private business; that appellee is the lawful owner of said pipe line, and has the right under the Constitution and laws of the United States to possess, use and enjoy said pipe line free from the dominion, interference or control of said Interstate Commerce Commission or anyone else; that the *right to refuse to surrender said pipe line to the public is property belonging to appellee* and cannot be taken from appellee without due process of law.

7. That said pipe line is necessary to enable appellee to prosecute its business and maintain its

competition with the Standard Oil Company; that the entire capacity of said pipe line is and will be constantly required to supply the refineries of appellee; that appellee anticipates that in the near future it will be necessary to enlarge the line to meet the requirements of appellee's own private demands thereon, and that if appellee should be required to surrender to the public the use of said pipe line, it would be compelled to close its said refinery at Cherryvale, Kansas, for lack of facilities to transport its own oil from its wells to its said refinery; that its private business would very injuriously be affected, and its ability to maintain its competition with the Standard Oil Company in the territory now supplied by said refinery would thereby be greatly diminished, if not destroyed.

8. That heretofore the Interstate Commerce Commission, upon its own motion, instituted certain proceedings entitled "In the Matter of Pipe Lines, No. 4199," for the purpose of determining its jurisdiction over and concerning certain pipe lines in the United States, among which is the pipe line of The Uncle Sam Oil Company. Appellee and various other corporations and partnerships were made respondents, and on the 8th day of June, 1911, the Interstate Commerce Commission made a certain order, set out in full in the petition.

That said order was duly served on appellee. Thereafter, at certain hearings provided by the Commission, testimony and other evidence having been offered, received and considered by the Commission, on the 28th day of March, 1912, the Interstate Commerce Commission made a further order and caused the same to be duly served on appellee and the other

respondents in said proceeding, propounding certain questions of law to each and all of the respondents in said proceeding, and requesting and directing that respondents appear before said Commission in the City of Washington on the 10th day of May, 1912, for the argument and hearing of the questions of law submitted as aforesaid.

9. That, as directed in said order, appellee appeared and submitted its brief and argument in writing. Afterwards, on the 3d day of June, 1912, the Interstate Commerce Commission made, rendered, and published its report, in the nature of findings of fact and conclusions of law, accompanied by a further order of said Commission in said proceeding, a copy of which report and order is attached marked Exhibit "A," and made a part of the petition.

10. That by the terms of said last mentioned order appellee was required on or before September 1, 1912, to file with the Interstate Commerce Commission schedules of its rates and charges for the transportation of oil, as a common carrier, in compliance with the said Commission's construction of the provisions of the Act to Regulate Commerce. That appellee has not now and never has had any schedules of rates and charges for the transportation of oil. It has never transported nor offered to transport any oil other than its own oil. Its incorporation was procured, its stock subscribed and sold, for the purpose of engaging in a private business, in manner and form that said business is now and heretofore has been conducted by appellee. That the stockholders and directors of The Uncle Sam Oil Company have never given their consent, or in any manner authorized the managing officers of

appellee to divert the property owned by it or any part thereof from the necessary private uses in which it is now employed, to the public service, or to the service of any other person, and they have no power to do so. That the pipe line of The Uncle Sam Oil Company cannot, nor can any part thereof be employed in the transportation of oil for the public or any other person without impairment and destruction of the value of the same to its owner as a necessary, economical and efficient means of carrying on, conducting and maintaining the business in which it is now engaged. That the order of said Commission last above referred to and set out in Exhibit "A" to the petition, is illegal and void, for the reasons, *first*, because the Interstate Commerce Commission does not have and possess any jurisdiction or control over the pipe line of appellee, or any lawful authority to make such order; *second*, because said order, should the same be made effective and be enforced, would impose all the burdens, liabilities and responsibilities of a common carrier upon appellee without its consent, without its power to assume them, and deprive it of its property, the use and control thereof without due process of law, and in violation of the Fourteenth Amendment to the Constitution of the United States, and *third*, because said order, should the same be enforced and become effective, would render the pipe line of appellee ineffective and inefficient for the purpose for which it was constructed and ever since has been used, and appropriate the same to the service of the public, to the exclusion of the use thereof by the owner, which would be a taking of the private property of appellee for a public use without just compensation,

in violation of the Fifth Amendment to the Constitution of the United States.

11. Appellee further avers that if said order of the Interstate Commerce Commission is allowed to become and be effective, many suits for penalties would be brought against appellee by many persons interested in said order and its enforcement, and claiming to be injured by the acts of appellee, which suits would be prosecuted as aforesaid by very many persons in the judicial districts of the United States against appellee, whereby appellee would be subject to a great multiplicity of suits, and great loss and damage would be inflicted upon it, all of which would greatly injure and embarrass appellee in the transaction of its business, unless said order be obeyed, and appellee thereby surrender and be deprived of the use and enjoyment of its own private property, to its irreparable injury through the impairment and destruction of its ability to carry on the business in which it is now engaged and to which the present employment of its pipe line is essential and necessary.

12. Appellee further avers, notwithstanding the facts aforesaid, that said Interstate Commerce Commission maintains and intends to maintain and will, unless the same is enjoined or suspended by the order of the Court, maintain the said order as an effective order, and institute or cause or suffer to be instituted the judicial proceedings aforesaid, which acts and doings are contrary to equity and good conscience, and violative of the property rights of appellee.

13. Appellee therefore prayed that upon the filing of the petition a temporary or interlocutory

order be entered therein, suspending the said order of the said Interstate Commerce Commission and restraining the enforcement thereof and restraining the said Interstate Commerce Commission from taking any steps or instituting any proceedings to enforce said order, and upon the final hearing of the cause that a decree be entered therein setting aside and annulling said order of the said Interstate Commerce Commission therein complained of, and perpetually enjoining the enforcement of the same, and that appellants and its agents, servants, and representatives, and each and all of them be perpetually enjoined from enforcing the said order and from taking any steps or instituting any proceedings for the enforcement of the same.

Appellee further prayed that if any delay intervened between the filing of the petition and the issuance of a temporary or interlocutory order, as prayed for therein, then and in that case an order be entered suspending the said order of said Interstate Commerce Commission, restraining and enjoining the enforcement thereof until the hearing and final determination of the application for a temporary or interlocutory order prayed for therein, and appellee further prayed that it be granted such other and further relief in the premises as justice and equity may require.

Appellee further prayed that the court grant unto it a writ of subpoena to the United States of America, and that due service thereof be made on the appellants the United States and the Interstate Commerce Commission, commanding them at a certain day and under a certain penalty therein to be specified, to appear before the court and then and

there full, true and complete answer make to all and singular the premises; but not under oath (an answer under oath being thereby expressly waived), and to stand and abide by such order and decree therein as to the court shall seem meet and agreeable to equity and good conscience.

To this petition the appellants, the United States and the Interstate Commerce Commission as intervenor have filed answers which practically admit the material facts stated in the petition, but set forth certain reasons why, as they claim, appellee should be decreed a common carrier and subject to the rules and regulations of the Interstate Commerce Commission. The answers allege that a part of the pipe line of the appellee was laid upon a right-of-way secured from the Indians through the Secretary of the Interior, and that said right-of-way was applied for and accepted by the petitioner under rules and regulations of the Interior Department, dated December 21, 1906, which provided that the person applying for and accepting the right-of-way should consent that the pipe line should be a common carrier. (Record, pages 9 to 46, inclusive.) But the record (pages 45 and 47, 48) shows that the application for the right-of-way for this pipe line was made by appellee on February 16, 1906, and filed in the department February 27, 1906; that the same was recommended for approval March 15, 1906, and approved by Thos. Ryan, First Assistant Secretary of the Interior, March 26, 1906, under the law and rules then in force which did not require the applicant to consent that the pipe line should be a common carrier. This record further shows that the pipe line was

BRIEF AND ARGUMENT.

First: The provisions of the Interstate Commerce Act apply only to common carriers at common law.

I. This is the reasonable interpretation of the language of the Act itself.

Section 1 of the Act was entirely re-enacted by Sec. 7 of the Act of June 18, 1910. As so amended, Section 1 reads in part as follows (italics mine):

> "Section 1. That the provisions of this Act shall apply to any corporation or any person or persons *engaged* in the *transportation* of oil * * * by means of pipe lines or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph and telephone and cable companies * * * *who shall be considered and held to be common carriers within the meaning and purpose of this Act,* and to *any common carrier or carriers engaged* in the *transportation* of passengers or property wholly by railroad * * *."

1. The words italicized, "*who shall be considered and held to be common carriers within the meaning and purpose of this Act,*" must be held to qualify and restrict the language "any corporation, etc., *engaged in the transportation* of oil * * * by means of pipe lines, etc." That is to say, the Act is to be interpreted as if it said that its provisions "shall apply to any corporation" (who shall be considered

and held to be *a common carrier at common law)* * * * "engaged, etc., * * *, shall be considered and held to be," a common carrier under the Act.

2. Otherwise it is necessary to assume that the Act is to be construed to mean that its provisions shall apply "to any corporation, etc., engaged in the transportation of oil * * * by means of pipe lines, etc.," * * * *and they* "shall be considered and held to be common carriers within the meaning and purpose of this Act." But the principal provisions of the Act apply, and originally applie' only to railroads, and the Act specifically limits their application to those railroads which are common carriers. A construction should not be favored which makes Congress, in the same Act, adopt a different policy in regard to pipe lines from that adopted in regard to railroads, with which the Act is chiefly concerned. Had that been its intention, it could and should have been clearly expressed. Instead of saying "who shall be considered and held to be common carriers within the meaning and purpose of this Act" it would have said "who are hereby declared to be common carriers within the meaning and purpose of this Act." The omission of language clearly having that effect is of vital significance, particularly when it is sought to bring corporations and persons within the Act as common carriers who are not common carriers in any sense known to the law.

Said Section 7 defines the word transportation as used in said Act in the following language:

> "The term 'transportation' shall include cars and other vehicles and instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied,

for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."

This is what Congress meant by the word "transportation" in the clause making the Act apply to any corporation or person "engaged in the transportation of oil." In other words the Act is made to apply only to those "engaged" in the "receipt," "shipment," "storage," and "delivery" of oil. This means those engaged in furnishing such facilities and service for others. The words "receipt," "storage" and "delivery" would not be used in describing the business of appellee, but are necessary in the description of the business of one who receives, transports, stores and delivers oil for others. In fact, the entire Act is taken up with provisions regulating the conduct of common carriers with the public and it has no application to appellee or its business as set forth in the petition.

"Of two constructions equally warranted by the language of an amendment, that is to be preferred which best harmonizes with the general tenor and spirit of the act amended."

Griffins Case, Chase (U. S.) 364;
Van Riper v. *Essex Public Road Co.*, 38 N. J. L. 23.

In *Wade* v. *Lumber Company*, 74 Fed. 517 (C. C. A., 5th Circuit, 1896), the court was considering an article of the State Constitution of Louisiana, which

provided, in substance, that all railroads were public highways and all railroad companies were common carriers. At page 521 the court said:

> "But for the earnestness with which the argument was presented in this court, we would not suppose that the learned counsel would seriously contend that Article 244 of the state constitution, dealing with corporations of public improvement and public utility, was intended to, or could be so construed as to, make out of a logging railroad appurtenant to a sawmill, constructed wholly on private grounds, and operated for private purposes, a common carrier charged with all the duties and responsibilities incumbent by the laws of the land upon common carriers, and simply because it is a railroad, and the owners are incorporated as a business corporation. It seems to us, we might as well hold that a railroad on a sugar plantation, appurtenant to the sugar mill, and used for carrying cane thereto, should be declared a common carrier. * * * The proposition that an individual or corporation may build a railroad wholly on his own land, for his own business, without making the same a common carrier, we do not doubt."

Judson on Interstate Commerce, 2d Ed. (1912), at page 220, says in part, referring to the language of Sec. 1 of the Interstate Commerce Act:

> "As to the owners of pipe lines who are not common carriers and who use their pipe lines solely for the transportation of their own products, it would seem that they are not included in the Act."

3. If, however, the words "*who shall be considered and held to be common carriers within the meaning and purposes of this Act*" were to be con-

strued as a declaration by the Act itself that the corporations and persons described are to be deemed common carriers within its provisions, the question would still remain, who are the corporations and persons so described? The language is "any corporation or any person or persons *engaged* in the transportation of oil * * * by means of pipe lines * * *." That means corporations or persons engaged in such transportation as a business—that is, for profit. It does not mean the transportation by a corporation or person of oil through its or his own pipe lines merely as an adjunct to the operation of the manufacturing business in which it or he is engaged. Do we speak of a company engaged in manufacturing which operates a railroad on its own right-of-way to bring to it coal or ore from some nearby railway system as "*engaged*" in the transportation of coal or ore? It is transporting coal and ore by railroad, but it would not be described as "engaged" in the transportation of coal and ore, because the obvious implication of that language is that it is engaged in it as a business. In other words, a mining or manufacturing company is engaged in mining and manufacturing, to which the transportation by itself of articles which it uses in its mining or manufacturing may be an incident, and the fact that it is such an incident would not bring the company within the description of one *engaged* in transportation. That language can only be appropriately used when transportation is the direct and principal occupation or business of the corporation. This is particularly true in view of the fundamental public purposes of the Act.

In *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 145 U. S. 263, at page 276, Mr. Justice Brown said:

> "The principal objects of the Interstate Commerce Act were to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions; to prevent undue or unreasonable preferences to persons, corporations or localities; to inhibit greater compensation for a shorter than for a longer distance over the same line; and to abolish combinations for the pooling of freights."

See, also, *Interstate Commerce Commission* v. *Harriman*, 211 U. S. 407, 418.

These objects have no application or pertinency to a private railroad or pipe line; and the fact that they have not furnishes a convincing reason against a construction of the Act which would bring such railroads or pipelines within its terms or operation. To apply the Act to a new subject presupposes an existing public use in connection with it in need of the regulation which the Act provides.

4. From no point of view can a person or corporation engaged in the movement of oil by pipe lines "be considered and held to be" a common carrier by any authority, judicial or administrative, unless it actually is a common carrier; and such a holding is, I submit, necessary to bring a pipe line within the Act.

II. If Section 7 of the Act is to be construed as applying to all pipe lines, including such as have been used exclusively to transport the oil of their owners, then that part of the Act is unconstitutional.

But the Court, to preserve the Act, will adopt that construction which is consistent with the Constitution, *or which avoids grave constitutional objections.* Hence, the construction contended for is the proper one.

U. S. v. *Del. & Hudson Co.*, 213 U. S. 366, 407-8.

Interstate Commerce Commission v. *Harriman*, 211 U. S. 407, 422.

III. If Section 7 of the Act is to be construed to apply to every corporation which transports its own oil by private pipe line for the purposes of its own business the provisions relating to pipe lines clearly violate the Fifth Amendment of the U. S. Constitution, in that they deprive the owners of private pipe lines of property without due process of law, and take private property for public use without compensation.

Monongahela Navigation Co. v. *United States*, 148 U. S. 312, 324.

United States v. *Lynah*, 188 U. S. 445.

United States v. *Welch*, 217 U. S. 333, 339.

Pumpelly v. *Green Bay Company*, 13 Wall. 166, 179.

In *Monongahela Navigation Co.* v. *United States, supra*, Mr. Justice Brewer, at pages 324, 325, said (italics mine):

> "The first ten amendments to the Constitution, adopted, as they were, soon after the adoption of the Constitution, are in the nature of a bill of rights, and were adopted in order to quiet the apprehension of many, that without some such declaration of rights, the government would

assume, and might be held to possess, the power to trespass upon those rights of persons and property which by the Declaration of Independence were affirmed to be unalienable rights.

In the case of *Sinnickson* v. *Johnson*, 17 N. J. L. (2 Harr.), 129, 145, cited in the case of *Pumpelly* v. *Green Bay Co.*, 13 Wall. 166, 178, it was said that 'this power to take private property reaches back of all constitutional provisions; and it seems to have been considered a settled principle of universal law that the right to compensation is an incident to the exercise of that power; that the one is so inseparably connected with the other that they may be said to exist not as separate and distinct principles, but as part of one and the same principle.' And in *Gardner* v. *Newburg*, 2 John. Ch. 162, Chancellor Kent affirmed substantially the same doctrine. And in this there is a natural equity which commends it to everyone. If in no wise detracts from the power of the public to take whatever may be necessary for its uses; while, on the other hand, *it prevents the public from loading upon one individual more than his just share of the burden of government*, and says that when he surrenders to the public something more and different from that which is exacted from other members of the public, a full and just equivalent shall be returned to him.

But we need not have recourse to this natural equity, nor is it necessary to look through the Constitution to the affirmations lying behind it in the Declaration of Independence, for, *in this Fifth Amendment, there is stated the exact limitation on the power of the government to take private property for public uses.* And with respect to constitutional provisions of this nature, it was well said by Mr. Justice Bradley, speaking for the court, in *Bond* v. *United States*, 116 U. S. 616, 635: 'Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This

can only be obviated by adhering to the rule that *constitutional provisions for the security of person and property should be liberally construed.* A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. *It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.* Their motto should be *obsta principiis.*"

Again, at page 336:

"Congress has supreme control over the regulation of commerce, but if, in exercising that supreme control, it deems it necessary to take private property, then it must proceed subject to the limitations imposed by this Fifth Amendment, and can take only on payment of just compensation."

The taking for public purposes need not be direct.

In *United States* v. *Lynah, supra,* it was held that land overflowed by water which had backed up from a Government dam was "taken" within the meaning of the Fifth Amendment, and, in *United States* v. *Welch, supra,* the same rule was held to apply to a *private right-of-way* which had been overflowed.

In *Pumpelly* v. *Green Bay Co., supra,* at page 179, Mr. Justice Miller said:

"But there are numerous authorities to sustain the doctrine that a serious interruption to the common and necessary use of property may be, in the language of Mr. Angell, in his work on water-courses, equivalent to the taking of it, and

that under the constitutional provisions it is not necessary that the land should be absolutely taken."

It is a taking of property within the constitutional prohibition to appropriate private pipe lines such as are here under consideration, to a public use.

IV. The only pertinent qualifications of the rules laid down in the last foregoing cases are those expressed in the well known elevator and stock yard cases: *Munn* v. *Illinois*, 94 U. S. 113; *Budd* v. *New York*, 143 U. S. 517; *Brass* v. *North Dakota*, 153 U. S. 391; *Cotting* v. *Kansas City Stock Yards*, 183 U. S. 79; *Ratcliffe* v. *Stock Yards*, 74 Kansas 1. It is true that these cases all relate to alleged violations of the Fourteenth Amendment to the Federal Constitution by acts passed by State legislatures; but the principles involved are entirely applicable to the passage of any similar statute by Congress.

The principle upon which all these cases rest is laid down in *Munn* v. *Illinois*, *supra*, at page 126, and the same language is repeated over and over again, not merely in the Federal cases, but in a long line of State decisions, many of which are referred to in the opinion of the U. S. Supreme Court in *Budd* v. *New York*, *supra*. This language is as follows (italics partly mine):

> "Looking, then, to the common law, from whence came the right which the Constitution protects, we find that, when private property is 'affected with a public interest, it ceases to be *juris privati* only.' This was said by Lord Chief Justice Hale more than two hundred years ago, in his treatise *De Portibus Maris*, 1 Harg. Law

> Tracts 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. *When, therefore, one devotes his property to a use in which the public has an interest,* he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. *He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control.*"

It appears from the further discussion in the opinion in *Munn* v. *Illinois* and in the opinions in the other cases cited above, as well as in the State cases referred to, that, by the words "use in which the public has an interest," the courts mean the use of the property in question for the service of the public, or at least for a section thereof. In no reported case, so far as I am aware, has the doctrine of *Munn* v. *Illinois* been applied unless the property has, at the time when the suit was brought, been actually in such use.

In *Brass* v. *North Dakota, supra,* the Court was considering an Act of the Legislature of the State of North Dakota, which provided in part as follows:

> "All buildings, elevators, or warehouses in this state, erected and operated, or which may hereafter be erected and operated, by any person or persons, association, co-partnership, corporation or trust, for the purpose of buying, selling, storing, shipping or handling grain for profit, are hereby declared to be public warehouses, etc."

Referring to this statute, Mr. Justice Shiras, at page 404, says:

> "We do not understand this law to require the owner of a warehouse, built and used by him only to store his own grain, to receive and store the grain of others. Such a duty only arises when he chooses to enter upon the business of elevating and storing the grain of other persons for profit."

The language of the North Dakota statute above quoted is very similar to that of Section 7 of the Interstate Commerce Act quoted above, and the language quoted from the opinion would seem to be a strong authority in support of the contention that the Interstate Commerce Act does not cover private pipe lines.

So in *Munn* v. *Illinois*, at p. 133, Mr. Chief Justice Waite said (italics mine):

> "There is no attempt to compel these owners to grant the public an interest in their property, but to declare their obligations *if they use it in this particular manner.*"

Quite recently the United States Supreme Court has held that private wharves on navigable streams cannot be taken without compensation, and that to compel the owners thereof to allow the wharves to be used by others would be to take property without due process of law. In this connection, the court distinguishes *Munn* v. *Illinois*.

Weems Steamboat Co. v. *People's Co.*, 214 U. S. 345.

In the case last cited, at pages 355-7, Mr. Justice Peckham said (italics mine):

"A private wharf on a navigable stream is thus held to be property which cannot be destroyed or its value impaired, and it is property the exclusive use of which the owner can only be deprived in accordance with established law, and if necessary that it or any part of it be taken for the public use, due compensation must be made. The owner of a private wharf on a navigable stream does not, on that account only, hold it by a different title from the owner of any other property which he may use himself or permit others whom he may select to use, while at the same time denying its use by anyone else.

The case of *Munn* v. *Illinois*, 94 U. S. 113, 127, has, in our judgment, no bearing upon the question before us. In that case and in those cited therein the discussion was in regard to the right of owners of property of the nature described to charge what they pleased for the doing of the business in which they were engaged. *Their property was being used with their consent by and its use devoted to the public to any extent desired, and the only question was in regard to the compensation which they were entitled to ask for the business thus done.* The complaint was that the charges were too great and were a violation of a law of the State and were not reasonable, and the answer made by the owners of the property was that it was their private property, and they had the right to charge what they pleased. *The court said, as you have devoted your property to a use in which the public has an interest, you have granted to the public an interest in that use,* and the right, on the part of the State, to regulate charges which you shall make, to the end that they shall be just and reasonable. *If the owner of one of these wharves had devoted it to the public use and permitted the public to use it as it desired, and demanded compensation for such*

use, the question as to the amount of such compensation might be raised as in the Munn class of cases to be determined with reference to the reasonableness of the charge. But this is no such case. The legislature has passed no law regarding rates, if that were material, and the reasonableness of the charge is not under consideration. The right to use the property has been withdrawn by the owner as to the public in general, including defendant. The only question is whether a third person has the right to use a private wharf on tendering reasonable compensation therefor, because there is no other wharf at the place, or because it would be more convenient to such third person to so use it or *because the former owner of the wharf had permitted the public to use it, although the present owner refused to consent to such use.* There is no more reason why such property should be held subject to the right of others to use it against the will of its owner than there is for any other kind of property to be so held."

A private pipe line, built by a business corporation and operated for the transportation of its own oil, so far as the rights of its owner are concerned, differs in no respect from a private wharf such as was under consideration in the case last cited.

V. The Act contains no definition of the words "common carrier," except that they shall include express companies and sleeping car companies. Whether a pipe line company in 1910 was in fact a common carrier or not must, therefore, be determined by the common law definition of those words.

Judson on Interstate Commerce, 2d Edition, p. 220, says:

"The application of the provisions of the Act to pipe lines was made by the amendment of 1906. Owners of pipe lines had been held to

be common carriers when doing business for the public as such. *Griffin* v. *Pipe Lines*, 172 Pa. 580. * * * As to the owners of pipe lines who are not common carriers, and who use their pipe lines solely for the transportation of their own products, it would seem that they are not included in the Act. * * * The Act does not define what will necessarily constitute a person or a corporation a common carrier, nor does it empower the Commission to lay down the tests. It follows that the expression 'common carriers' used by Congress means those carriers which are common carriers at common law, and which have complied with such requirements as may have been imposed by constitutional or legislative authority."

The Commission has also so held, at least as to railroads.

In *Manufacturers' Railway Co.* v. *St. L., I. M. & S. Railway Co.*, 21 I. C. C. R. 304 (1911), Mr. Commissioner Clements said, at page 312 (italics mine):

"*The Act to Regulate Commerce, limiting its application, as it does, to common carriers, was passed in full view and recognition of the common law under which the attitude and actions of the person, whether natural or artificial, determines whether or not he or it is in law a common carrier.* Speaking in general terms, a carrier could become a common carrier by offering its services as such to the public upon first complying with the statutory or police requirement demanded of it by charter or otherwise. *The test to be applied in determining whether a person is a common carrier really is whether he holds out, either expressly or by a course of conduct, that he will, so long as he has room, carry for hire the goods of every person* indifferently who will bring goods to him to be carried. *Nugent* v. *Smith*, 1 C. P. Division 19, 27. With respect

to the transportation of persons and property by rail, the act to regulate commerce has not undertaken to specify in terms what shall, for the purpose of that statute, be considered to be a common carrier, but has proceeded upon the foundation of the common law as to public callings. It is not therefore within the authority of the Commission to pronounce any carrier by rail not to be in fact or in law a common carrier, if, by the tests and principles of the common law, coupled with such requirements as may have been imposed by constitutional or legislative authority, it would be held to be such."

At common law, the words "common carrier" were limited to one who undertook or held himself out to carry for all persons who wished to engage him.

1. Such is the law in England.

In *Ingate* v. *Christie*, 3 Car. & K. 61 (1850), which is a leading case, Baron Alderson said:

"Everybody who undertakes to carry for anyone who asks him is a common carrier. The criterion is whether he carries for particular persons only, or whether he carries for everyone. If a man holds himself out to do it for everyone who asks him, he is a common carrier; but, if he does not do it for everyone, but carries for you and me only, that is a matter of special contract."

Gisbourn v. *Hurst*, 1 Salk. 249, defines a common carrier as

"any man undertaking for hire to carry the goods of all persons indifferently."

In *Nugent* v. *Smith, L. R.*, 1 C. P. 19, at p. 27, Bretf, J., said:

> "The real test whether a man is a common carrier, whether by land or water, therefore, really is whether he has held out that he will, so long as he has room, carry for hire the goods of every person who will bring goods to him to be carried. The test is not whether he is carrying on a public employment, or whether he carries to a fixed place; but whether he holds out, either expressly or by a course of conduct, that, he will carry for hire, so long as he has room, the goods of all persons indifferently who send him goods to be carried."

2. In the United States the test is practically the same as in England.

In *Jackson Architectural Iron Works* v. *Hurlbut*, 158 N. Y. 34, Judge O'Brien defines a common carrier at page 38 as follows:

> "A common carrier is one who, by virtue of his calling, undertakes for compensation to transport personal property from one place to another for all such as may choose to employ him, and everyone who undertakes to carry for compensation the goods of all persons indifferently is, as to liability, to be deemed a common carrier."

In *Allen* v. *Sackrider*, 37 N. Y. 341, the Court of Appeals said, at page 342:

> "The employment of a common carrier is a public one, and he assumes a public duty and is bound to receive and carry the goods of anyone who offers. 'On the whole,' says Professor Parsons, 'it seems to be clear that no one can be

considered as a common carrier unless he has in some way held himself out to the public as a carrier, in such manner as to render him liable to an action if he should refuse to carry for any one who wished to employ him."

Mr. Moore, in his work on Carriers, says, at page 20:

"According to all the authorities, the essential characteristics of the common carrier are that he holds himself out as such to the world; that he undertakes generally, and for all persons indifferently, to carry goods and deliver them, for hire; and that his public profession of his employment be such that, if he refuse, without some just ground, to carry goods for anyone in the course of his employment and for a reasonable and customary price, he would be liable to an action."

This definition was quoted with approval by the Circuit Court of Appeals in the Second Circuit, in *The Wildenfels*, 161 Fed. 864.

In *United States* v. *Sioux City Stock Yards*, 162 Fed. 556, a common carrier of personal property is defined to be

"one who undertakes for hire to transport from place to place the goods of others who may choose to employ him for that purpose."

3. Obviously, The Uncle Sam Oil Company does not come even remotely under any of the definitions of a "common carrier" thus laid down.

Second: Companies organized under business corporation laws, and which profess to do and are actually doing only a private business, even if it be a transportation business, are not subject to regulation under the Interstate Commerce Act. Such companies lack the essential characteristics of a holding out to the public for general services.

1. It has been held in numerous cases that industrial railroads, built for the transaction of private business, are not subject to liability as common carriers.

Wade v. *Lutcher & M. Lumber Co.*, 74 Fed. 517 (C. C. A., 5th Circuit, 1896).

E. E. Taenzer & Co. v. *C., R. I. & P. Ry. Co.*, 170 Fed. 240, 248, 249 (C. C. A., 6th Circuit, 1909).

Weidenfeld v. *Sugar Run R. R. Co.*, 48 Fed. 615, 617, 618.

McKivergan v. *Lumber Co.*, 124 Wis. 60.

In *Wade* v. *Lumber Co.*, *supra*, at page 521, the Circuit Court of Appeals for the Fifth Circuit said:

> "But for the earnestness with which the argument was presented in this court, we would not suppose that the learned counsel would seriously contend that Article 244 of the State Constitution, dealing with corporations of public improvement and public utility, was intended to or could be so construed as to make out of a logging railroad appurtenant to a sawmill, constructed wholly on private ground and operated for private purposes, a common carrier, charged with all the duties and responsibilities incumbent by the laws of the land upon common carriers, and simply because it is a railroad, and the owners are incorporated as a business corporation. It seems to us, we might as well hold

that a railroad on a sugar plantation, appurtenant to the sugar mill and used for carrying the cane thereto, should be declared a common carrier. The Supreme Court of the State of Louisiana, while not squarely deciding the matter in hand, has decided that a corporation organized to carry freight and passengers between two sugar plantations about five miles distant from one another, and which, it was charged, was not a corporation organized for public purposes, but was a combination of individuals, whose sole object was to foster private ends of two certain persons named, who owned jointly two sugar plantations and who wished to transport the sugar cane grown on one of the plantations to the refinery situated on the other, was not *ex necessitate* such a corporation for public improvement as would authorize the appropriation of private property for its purposes. *Williams* v. *Judge of the Eighteenth Judicial Court*, 45 La. Ann. 1295, 14 South. 57. The proposition that an individual may build a railroad wholly on its own land, for its own business without making the same a common carrier, we do not doubt."

In *Taenzer & Co.* v. *Chicago, R. I. & P. R'way Co.*, *supra*, the Circuit Court of Appeals for the Sixth Circuit held that a spur railway line built by a lumber company on its own land, forming a connecting line between a railroad and its mill, some miles distant, for the purpose of transporting its own products to the railroad for shipment, and which neither did nor held itself out to do carrying for the public, was not a common carrier. The court said, at pages 248-9:

"The chief arguments adduced in favor of the proposition that the so-called St. Francis River Railroad is a common carrier are that

the term 'railroad,' as contained in the name under which the road was operated, imports the status of common carrier; that the provisions in the contract for joint construction and maintenance of passenger and freight depot buildings and platforms (including joint station agent) and references therein to the lumber company's line as a 'railroad' and to its 'right-of-way'; the provisions for division of freight rates, as between two connecting carriers, and the including in the agreement for rates and division thereof, shipments of cotton and merchandise, are consistent only with the status of the St. Francis River Railroad as a common carrier. But these considerations cannot outweigh the substantial considerations shown, not only by the contract, but by the conditions and circumstances under which it is shown to have been made. They cannot overcome the fact which clearly stands out, according to the proofs given or offered, that the so-called railroad was intended, both by the railroad company and the lumber company, merely as a spur to the mill, for the purpose of enabling the lumber company, not as a carrier, but as a shipper, to transport its forest products over the line of the Choctaw road; that throughout the lumber company's relation to the railroad company was in fact that of shipper—a relation emphasized by the requirement that the lumber company ship 'its products over the Choctaw railroad, unless transported by river.' The terms used and the provisions relied upon as establishing the status of common carrier cannot prevail against the considerations that this lumber and logging road had no rolling stock suitable for any purpose except logging; that there was in the neighborhood no cotton or other merchandise to ship, and no inhabitants to serve as carrier, either in the relation of passengers, shippers or consignees; and that there was no holding out of the road as such carrier by advertisement or otherwise.

** * * A private railroad, established as an incident to a private business, is not a common carrier."*

II. The same view is expressed concerning pipe lines under the Interstate Commerce Act, by Judson on Interstate Commerce, 2d Edition, at page 220:

> "As to the owners of pipe lines who are not common carriers, and who use their pipe lines solely for the transportation of their own products, it would seem that they are not included in the Act."

Third: Even companies organized under transportation laws which grant the right of eminent domain and common carrier franchises and impose public duties are not necessarily common carriers within the meaning of the Interstate Commerce Act unless actually operating as such.

I. From the point of view of the State granting a charter which confers the right of eminent domain and common carrier franchises, or otherwise specifically provides for public service to be rendered under it, the acceptance by such corporation of such charter undoubtedly amounts to an undertaking by such corporation to serve all, and subjects the corporation to the duties of a common carrier.

Griffin v. *Southwest Penn. Pipe Lines*, 172 Pa. State 580.

People v. *Colorado Central Railroad Co.*, 42 Fed. 638, at p. 642.

Cincinnati, I. & W. Ry. v. *Connorsville*, 170 Ind. 316.

II. But it by no means follows that such companies are within the provisions of the Interstate Commerce Act.

The purpose of the Act should be borne in mind. Its underlying principle was to secure reasonable rates, to prevent discriminations against shippers and localities, and publicity of rates. *Interstate Commerce Com.* v. *B. & O. R. R. Co.*, 145 U. S. 263; *N. H. R. R. Co.* v. *Interstate Com. Com.*, 200 U. S. 361. From this point of view it is concerned only with those carriers which *are actually serving* two or more possible competitors or the public generally.

This view has been accepted by the Interstate Commerce Commission itself. In *Star Grain & Lumber Co.* v. *Atchison, Topeka & Santa Fe Railway Co.*, 17 I. C. C. R. 338 (1909), Mr. Commissioner Harlan said, at page 344 (italics mine):

> "It is sometimes said that the essential characteristic of a common carrier is that it holds itself out as such to the world, and, in a certain class of cases, some such test has been applied; and where there is a shipping world to which it may hold itself out as a common carrier and which it may serve in that capacity, the test suggested may be a proper one. But when we are dealing with a law, the underlying principle of which is to forbid preferences, discriminations and concessions from the legal rates, and when there is no shipping public which the alleged common carrier may serve, and when it is owned or controlled directly or indirectly by a particular industry which needs it as a plant facility and cannot successfully conduct its business without it, and when its revenues accrue directly or indirectly to that industry—it leaves this Commission in rather an impotent condition if it must accept the mere

form as controlling, and may not look into the actual situation and thus be able to enforce the prohibitions of the Act against such preferences and discriminations and departures from lawfully published rates. Some such state of facts was developed in *Taenzer & Co.* v. *C., R. I. & P. Ry. Co.*, 170 Fed. Rep. 240. Shortly before that proceeding was commenced *the logging road in behalf of which the case was instituted was incorporated as a common carrier*, so that it stood before the court with all the outward form of a common carrier possessed by the great majority of the so-called tap lines that are now before us on this record. * * * Upon these facts the court had no difficulty in holding that the tap line 'was not a common carrier'."

The Commissioner continued, at page 352:

"The difficulty of determining where the private carrier leaves off and where the common carrier begins is what lends embarrassment to the problem before us. Manifestly, a lumber company cannot endue its railroad with the habiliments of a common carrier by taking out an act of incorporation, nor by the filing of a tariff, nor by the making of a statistical report to this Commission. The fact that the Legislature of the state has granted an act of incorporation with the right of eminent domain, especially if that right has been exercised in the construction of the road, would be significant; *but, after all, it is in each case a question of fact, depending upon the circumstances under which the individual road has been constructed and is being operated*."

See, also, *Weidenfeld* v. *Sugar Run R. R. Co.*, 48 Fed. 615, 617-18.

There is, therefore, a clear distinction between the powers of the State which creates such a cor-

poration and the powers of the Interstate Commerce Commission as limited by this Act. In its relation to the State the corporation is clothed with a public interest and subject to regulation, because its charter so provides. If it refuses to perform the duties which it has undertaken its charter may be enforced or revoked, or other penalty imposed. But the Interstate Commerce Commission is given no such power. It has jurisdiction *only if the corporation is actually doing the business of a common carrier in interstate commerce.* It then regulates and controls such business; but it has no power to enforce the charter undertakings of a corporation, or to compel it to act as a common carrier if it is not doing so.

Fourth: The transactions of appellee are interstate transactions, but are not interstate commerce, as they do not constitute or involve any dealings beween appellee and another. The Constitution does not give the Congress authority to regulate interstate transactions which do not amount to commerce and if the act should be construed to apply to the transactions of appellee it would be unconstitutional.

The fact that appellee produces and pumps its oil through its 3-inch pipe line from its oil wells in Oklahoma to its refinery in Kansas, does not show that it is engaged in the transportation of oil in *interstate commerce.* All acts performed by its employees are performed by it—their acts are its acts, and hence there is no dealing between appellee and another. Congress is granted the power to regulate interstate *commerce.* That does not include the

power to regulate interstate transactions *which do not amount to commerce.* The word *commerce* is a well-known term. It is absurd to say that a transaction which involves no dealing with others is commerce. Commerce means dealing between two or more persons, and there is no commerce or dealing between The Uncle Sam Oil Company and any other person, in the transaction by which it produces the oil at the wells in Oklahoma and transports it through its 3-inch pipe line from the oil wells in Oklahoma to its refinery at Cherryvale, Kansas. This transaction is one entirely within the company. No other person is concerned with it, and there is no semblance of commerce in it. The transaction is precisely the same as the transaction of a farmer who owns land crossed by the state line between Oklahoma and Kansas and who drills an oil well on his own land in Oklahoma and pipes his oil across the state line to his tank on his own land in Kansas. It would be absurd to say that he is a common carrier and that by such transaction he is engaged in interstate *commerce* and could be compelled to transport oil for the public through his line, or else to cease piping his own oil, nor would the fact that his pipe line crossed the public highway make him a common carrier.

In construing the law and in ascertaining its true meaning we should constantly bear in mind that not only the President, but each member of the Congress, has taken an oath to *support* the Constitution, and that they never intended to violate that oath by passing a law which would *violate* the Constitution. The Constitution is a compact between the people as a whole on the one part and each individual on the

other part, and it is supreme. Whenever any law is in conflict with the Constitution the law is void. The Constitution does not give the Congress the power to regulate interstate transactions of an individual or corporation which consist of transporting a commodity from a point in one state to a point in another state and delivering the commodity to itself, for there is no *dealing* in the transaction. It does not amount to commerce. Interstate *commerce* is all that Congress can regulate.

Constitution, Article 1, Section 8.

8 Federal Statute An., page 363, and cases there cited.

Commerce is defined by Webster's Universal Dictionary as follows:

"1st. In a general sense, an interchange of goods, wares, productions, or property of any kind, between nations or individuals, either by barter, or by purchase and sale, trade, traffic. 2d. Intercourse between individuals, interchange of work, business, civilities, or amusements; mutual dealings in common life. The word is synonymous with barter, business, communication, dealing, exchange, intercourse, trade, traffic."

"Commerce among the states consists of *intercourse and traffic between their citizens.*"

Gloucester Ferry Co. v. *Penn.*, 114 U. S. 203.

Addyston Pipe, etc., Co. v. *U. S.*, 175 U. S. 241.

"*Intercourse*" and "*traffic*" "*between*" citizens. There is no intercourse or traffic between citizens in the transactions of The Uncle Sam Oil Company

whereby it transports its own oil through its three-inch pipe line from its oil wells near Bartlesville, Oklahoma, to its own refinery at Cherryvale, Kansas. It is purely a private transaction of the Company in which no one else is interested or participates and it does not amount to intercourse or traffic between the Company and any other person; therefore it does not amount to commerce and cannot be regulated by Congress without an amendment of the Constitution.

The Uncle Sam Oil Company has the legal and constitutional right to transport its oil through its own pipe line from its oil wells near Bartlesville, Oklahoma, to its refinery at Cherryvale without any interference by others. It has the *right to refuse to transport oil* through its pipe line for others. This *right to refuse* to work for others and *furnish the use of its property to others* is *property* within the meaning of the Constitution, and it cannot be taken from the Company by Congress without due process of law.

Constitution, 5th Amendment.

The Constitution is the supreme law of the land, and no Act of Congress is of any validity which does not rest on authority conferred by that instrument.

U. S. v. *Germaine*, 99 U. S. 510, 9 Federal Statutes An. 219.

Mr. Webster, in *Dartmouth College* v. *Woodward*, 4th Wheat. (U. S.) 518, defined due process of law thus:

"By the law of the land, which is but another expression for due process of law, is most clearly indicated the general law—a law which

hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees, and forfeitures in all possible forms would be the law of the land. Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the Legislature. There would be no general permanent law for courts to administer or for men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees, not to declare the law or to administer the justice of the country."

10 Am. & English Ency. of Law, 2d Edition 293, and cases there cited.

Justice Johnson, in the case of *Columbia Bank* v. *Okely*, 4 Wheaton (U. S.) 235, defines the clause due process of law, as being intended to secure the individual from the *arbitrary* exercise of the power of government *unrestrained by the established principles of private right* and distributive justice.

Hoover v. *McChestney*, 81 Federal Reports, 48.

Meyers v. *Shields*, 61 Federal Reports 718.

If it is true that Congress has no power to regulate a private transaction which possesses none of

the elements of commerce, then, of course, the rule of reason would interpret the law to read that the Act should apply only to persons engaged in the transportation of oil *for others*. That is evidently what Congress intended, for the entire Act is taken up with regulations of the conduct of the transportation company with those employing it to transport and handle their commodities.

A common carrier is one who undertakes, for hire or reward, to transport from place to place the goods of those who choose to employ him, and his duties and liabilities are well settled in the law. See Am. & English Ency., 2d Edition, 237, 245.

Under the common law and where there is no special contract affecting the rights and duties of the parties, a common carrier is liable absolutely and at all events for a failure to deliver the property intrusted to its safety to the consignee or owner. Its liability is not limited to losses which are the result of its negligence, but extends to any loss however caused, excepting only those losses or injuries caused by an act of God, or the public enemy, or through the shipper's negligence.

6 American & English Ency. of Law 262, 263, and cases there cited.

How is it possible for any law-abiding citizen to contend that The Uncle Sam Oil Company shall be compelled to receive and transport through its 3-inch pipe line all the oils which others may offer, and that it shall be compelled to take said oil and assume the absolute liability of delivering it to the consignee or owner, notwithstanding the transportation of this

oil for others would suspend the operation of its refinery for lack of ability to transport its own oil to its refinery? How can it be claimed that this liability and injury could be forced upon The Uncle Sam Oil Company when it has never offered to transport any oil for any person and has never transported oil for any person? If the duties and obligations of a common carrier can be imposed upon The Uncle Sam Oil Company under these conditions, then they can be imposed upon every farmer in the United States who hauls his grain and products from his farm to market. The public highways are for the use of the public. The Uncle Sam Oil Company is a part of the public and it has as much right to use the public highway to transport its oil in a pipe line as it would have to transport its oil in a wagon drawn by oxen.

State v. *Kansas Natural Gas Co.*, 80 Pac. 962, 71 Kan. 508, 114 Am. State Rep. 507.

La Harpe v. *Gas Co.*, 69 Kan. 97, 76 Pac. 448.

McCann v. *Telephone Co.*, 69 Kan. 210, 76 Pac. 870, 66 L. R. A. 171.

It would be absurd to claim that because it transports its oil over the public highway in a tank wagon drawn by an ox team, that it therefore became a common carrier of oil and was obliged to carry all the oil offered it, and insure the safe delivery of such oil under all circumstances. I realize that this is an age in which many innovations are proposed. I am expecting to see some candidate for the presidency propose an amendment to the multiplication table, a repeal of the Ten Commandments and of the law of

gravitation, but if the Constitution is to be of any validity or value to the plain common people, no such proceeding as declaring The Uncle Sam Oil Company a common carrier, and burdening it with the duties and obligations of a common carrier, to the injury of its own business, will be countenanced by this Court. The only argument in favor of such outrage is the plea that someone else may have oil to transport and no pipe line in which to transport it. With equal force our refineries could be declared common refineries; our tank cars common tank cars; our distributing stations common distributing stations, and our tank wagons common tank wagons, and all turned over to the use of those who had oil to refine, transport and distribute, but no refineries, tank cars, distributing stations or tank wagons. If that plea should warrant the confiscation of our property and the injury of our business, which would be caused by compelling us to assume the duties and obligations of a common carrier, then the same rule would make a common carrier out of the farmer who owns a team and transports his farm products from his farm to market, provided there should be another farmer who had products to transport, but no team.

Appellants lay much stress upon the debates in Congress and the reports of departmental agents showing a desire on the part of a large element of the people to have oil pipe line companies declared common carriers. Senators and Congressmen and Departmental Agents may come and go, as many of them have, but the Constitution remains. It cannot be violated if our liberties are to be preserved. Even if all of the Senators, Congressmen and Departmental Agents were in favor of violating the Constitution

their acts to that end would be void. The court would be bound to declare the truth and the truth would make their acts of no effect. The position of appellants that the intention of Congress should prevail amounts to an argument in favor of rendering the Constitution of no force or effect. If the Constitution can be changed at the will of Congress, then the Constitution is a mere dream which can be dissipated by any act of Congress and we would be substituting a government by men instead of our present government by written law. The Constitution provides how it may be changed by amendment. The people have a right to change the Constitution by amendment, but even all of the people have no right to take our property without compensation so long as the Constitution remains in its present form.

Congress recognized the law which classifies carriers into two classes, common carriers and those not common, and it has undertaken to place the burden of common carriers upon every pipe line company which carries any oil *for others* from one state to another. Evidently this is undertaken by the Congress for the purpose of preventing the owner of such pipe-line from discriminating in favor of certain favored shippers, and I am not contending that Congress does not have the power to do this. It seems but fair to require a company which transports oil from one state to another for one person to also transport the same kind of oil for others at the same rate and under the same terms and conditions. This may be undertaken by the Act in question. When a company transports oil from one state to another for one person, even under a special contract, the transportation is interstate commerce, and the Congress

may have the constitutional right to say to the transporting company: "If you engage in such interstate commerce with one person you must also do likewise with others." This seems just. But where the transaction of the company is a mere transporting of its own oil from one point to another to itself, and *there is no dealing with another involved*, it is not *commerce*. It is not interstate commerce, and the Congress cannot, *on account of such transaction*, burden the company with the obligations and duties of a common carrier. The fact that The Uncle Sam Oil Company intends to refine and sell its oil after it reaches Cherryvale cannot make transportation of it from its wells near Bartlesville to its refinery at Cherryvale, interstate commerce. If that was the law, then if a farmer in one state *intended* to haul his products to a market across the state line and sell them there, his intentions to sell at that market would make his work of raising and hauling the crop interstate commerce. The law must be uniform and bear upon all alike. If the work of the farmer in raising and hauling his crop to market would not be interstate commerce until he should *actually sell and agree to deliver his product to another* across the state line, it is clear that the same rule would not make the transportation by The Uncle Sam Oil Company of its oil from its oil wells in Oklahoma to itself in Kansas, interstate commerce. It would not be interstate commerce unless the company had sold its oil in Oklahoma and agreed to deliver it in Kansas. This it has never done.

If The Uncle Sam Oil Company can be declared a common carrier, its rich and powerful competitor could easily manage to have oil enough tendered for

shipment to equal the capacity of the line and thereby prevent The Uncle Sam Oil Company from transporting to its refinery any of its own oil, and in this manner it could close a competing refinery. This is not in the interest of competition. It is not for the best interest of the people. I submit that the best interests of the people will best be subserved by strict adherence to the Constitution. It has protected the people by preserving their rights these many years, and it should not be violated in this instance. It is easy to start a conflagration, but not so easy sometimes to put it out. It may seem easy to pile these illegal burdens upon The Uncle Sam Oil Company, but if the Constitution can be violated in this instance, who will say it may not be violated in every other instance, and whose rights will be safe? This should be, as it was intended, a government of law, not of men, and until the Constitution is legally amended, so as to authorize Congress to provide that everyone owning a pipe line shall be a common carrier, whether he offers to carry for the public or not, it should be held that there is no law making the Uncle Sam Oil Company a common carrier under the circumstances set forth.

Fifth: The laws of the State of Kansas and the State of Oklahoma, undertaking to make the owners of pipe lines, under certain conditions, common carriers, do not have that effect as to appellee.

For the reasons set forth herein, no state has the power to convert the owner of a private pipe line into a common carrier without the consent of the owner, unless the owner has held himself out as will-

ing to assume the duties and liabilities of a common carrier. In other words, *unless the pipe line owner dedicates his property to the use of the public.* This has never been done by the appellee, and from the authority cited in this brief the states are without any power or authority to decree by legislative enactment the appellee to be a common carrier and to impose upon it the duties and obligations of a common carrier by legislative enactment without its consent.

As stated in the petition, the pipe line of appellee extends from Bartlesville to Cherryvale, *both points being within the oil field and the market price of the crude oil being the same at each end of the line.* This fact makes it clearly improbable that any owner of crude oil would desire to have it transported through the pipe line of appellee. Such crude oil owner could get for his crude oil the same price before shipping as he could get after the shipment was made and he would lose the cost of transportation by the operation. No owner of crude oil has yet been discovered who is so lacking in business acumen as to be willing to pay appellee for transporting the oil sixty miles when he could secure the same market price without making the shipment. *This fact accounts for the fact that since the pipe line of appellee was constructed in 1906 no person has tendered any oil for shipment.*

The law in Oklahoma referred to in the answers was passed after said pipe line was laid and in operation in accordance with the rights granted by Congress and the Territory of Oklahoma. It clearly refers and applies to common carriers, but does not apply to the pipe line of appellee.

Sixth: The public policy of the United States or of any state therein cannot be created in violation of the Constitution.

The answers and briefs of appellants are largely devoted to statements attempting to show the court that a law which would require a pipe line to be a common carrier might be beneficial to a certain class of people, and that it is practical for a pipe line to accept a certain grade of oil from the shipper and deliver a like quantity of a like grade of oil at the place of destination. Counsel for appellants may be correct in these conclusions, but I apprehend that this Court will not undertake to enter upon the creation of such legislation when Congress has not even attempted it. Congress has not undertaken to say in terms that appellee must build storage tanks for the various grades of oil and must receive the various grades of oil and trade therefor the same amount and grade of oil at the place of destination plus a reasonable charge for the services. It is left for the ingenuity of counsel to suggest that appellee might engage in the business of a warehouseman and trade oil with the public. The duty of a common carrier is to deliver the identical property tendered for shipment to the consignee or owner at the place of destination. It may be argued that grain is exchanged in the course of shipment. If this occurs it occurs by contract and the contract makes the carrier, so far as the exchange is concerned, a warehouseman. Congress has not undertaken to declare pipe line companies warehousemen. Counsel for respondent surely cannot go to the extent of claiming that Congress by the Act declared or undertook to declare

that pipe lines companies are warehousemen. And even had it so intended to declare the public policy, it could not so violate the Constitution.

Seventh: Appellee has no power to construct or operate a pipe line as a common carrier.

By reference to the laws of Arizona at the date of its incorporation, I think the Court must find and hold that appellee was organized as a private mining and manufacturing company. Section 21 of the Corporation Laws of Arizona at the date of the incorporation of appellee provides that "No corporation organized under the provisions of this Act for the purpose of doing a mining or manufacturing business shall have the power to construct or operate any railroad, tramway, turnpike or canal, except such as may lead from its principal works or place of business to some navigable stream or to some existing railroad, turnpike or public highway."

While the word pipe line is not used in said section, yet the fair intent of the Legislature clearly appears to be to withhold from any company organized for mining and manufacturing purposes the power to construct or operate any means for the transportation of persons or property as a common carrier. The Legislature provides for the organization, operation and control of railroads and other common carriers by separate enactments. It seems to me there can be no question but that under the law of its organization appellee is a private mining and manufacturing company and that the power and authority to act as a common carrier was withheld from it.

Eighth: The acceptance of a right-of-way from the Interior Department does not make the appellee a common carrier.

The answers of the United States and of the Interstate Commerce Commission both state that appellee made application for a right-of-way over Indian lands subsequent to December 21, 1906. They distinctly state that the application was made under the rules and regulations of the Interior Department, dated December 21, 1906, and that appellee in its application for said right-of-way and in accepting the same agreed that the pipe line should be a common carrier and that said application was approved by the Secretary of the Interior after December 21, 1906, and under said rules which required the applicant for right-of-way to agree that the pipe line to be laid should be a common carrier. These positive statements in the answers are sworn to by the persons who verified the answers. I do not question the sincerity and honesty of purpose of the persons who verified the answers. I am informed by an attorney for the Interstate Commerce Commission that this false information was furnished by some person in the Interior Department and I believe that someone in the Interior Department deliberately deceived counsel for the United States and for the Interstate Commerce Commission and the Honorable Charles A. Prouty, the Commissioner who verified the answer of the Interstate Commerce Commission, and misled them to believe that the records showed that the application for the right-of-way for this pipe line had been made subsequent to December 21, 1906, and that appellee made the application under said rules and

regulations of December 21, 1906, and agreed that the pipe line should be a common carrier. The record discloses the falsity of such statement and the desperation to which the Interior Department seems to be driven in its opposition to appellee. The extortionate demand by the railroad company, which had upon its board of directors the late H. H. Rogers, managing officer of the Standard Oil Company forced appellee to build this pipe line to move its oil from its wells to its refinery to avoid paying said railroad more than the market value of the oil for transporting it sixty miles in appellee's own tank cars. Now the Interior Department furnishes the Interstate Commerce Commission the false statement that said pipe line was laid upon right of way obtained by an agreement that it should be a common carrier, to induce the Interstate Commerce Commission to take that position and the Honorable Charles A. Prouty and the Honorable Blackburn Esterline to swear that such misstatement is the truth. On this decree of the Interstate Commerce Commission, based upon this false information furnished by the Interior Department, the Interior Department has refused to approve any lease for oil or gas purposes made by the Indians to appellee and stated to Congressmen, Senators and the public generally that it disapproved the lease because the Interstate Commerce Commission had declared appellee a common carrier. The Interior Department in this matter stands in no enviable position. It is no excuse to say that the statement was made because a map was returned to the Department January 1, 1907, and approved January 23, 1907. The record shows that this map was in the Department prior to December 5, 1906, and

that the application for the right-of-way was made in February and approved in March, 1906; that this map, which is but a picture of the right-of-way applied for and granted on March 26, 1906, was merely completed by attaching thereto the surveyor's notes to make it more plain and clear; that said map did not change the right-of-way, and that in approving said map the then First Assistant Secretary if the Interior, the Honorable Thos. Ryan, distinctly stated that the application for the right-of-way had been approved March 26, 1906. The record shows that the pipe line was completed and in full operation November 16, 1906, and the completion of the map could not change the rights of the Company to the right-of-way for said pipe line any more than a photograph of the line could do so. There is nothing on record showing that the appellee ever knew of the rules of December 21, 1906, and affidavits from its officers prove that it had no knowledge or notice of such rules. Under these conditions there could be no estoppel of the appellee to claim that said pipe line is not a common carrier.

The rules and regulations of the Interior Department, dated December 21, 1906, requiring applicants for right-of-way to agree that the pipe line should be a common carrier, were repealed by the Interior Department June 10, 1909, and even if said rules had been legal and authorized by Congress, the repeal would relieve appellee from complying with their terms. But the provisions of the rules of December 21, 1906, which require applicants for right-of-way for pipe lines over Indian lands to agree that such pipe lines shall be common carriers, are not authorized by law. They are a usurpation of author-

ity by the Interior Department and were an attempt on the part of the then Secretary of the Interior to enact a law on the subject when Congress, the law-making body, had not done so. The law under which said rules were made was the Act of March 11, 1904, entitled "An Act authorizing the Secretary of the Interior to grant right-of-way for pipe lines through Indian lands." The Act gives the Secretary of the Interior authority to determine the compensation to be paid the Indians for the right of way. That is the extent of his authority as to imposing terms for the right-of-way granted. It gives no authority to the Secretary of the Interior to manage the operation of the pipe line. Any attempt of the Secretary of the Interior to conduct or manage the pipe line would be a usurpation of authority, and any rule made by him, not authorized by law and not incidental to carrying out the provisions of the law, are void, notwithstanding parties dealing with the Department have been compelled to incorporate such void rules and requirements into a written contract.

U. S. v. *McMurray*, 181 Fed. 723.

See also:

Garfield v. *U. S.*, 211 U. S. 249, 29 S. Ct. 62, 53 U. S. (L. ed.) 168, affirming 30 App. Ca'es 177.

In the above case of *U. S.* v. *McMurray*, regulations by the Secretary of the Interior which require lessees of coal and asphalt lands to mine on each lease 3,000 tons the first year, 4,000 tons the second, 7,000 tons the third, 8,000 tons the fourth and 15,000 tons the fifth and each succeeding year or pay the

royalties on such quantity if not mined, and prescribing that a failure to do so would subject the lease to cancellation, were held to be void. There is some slight excuse for the Secretary to make these requirements as to the quantity of coal to be mined, because it might be thought to be incidental to his authority conferred by Congress, but there is no reason upon which to base the action of the Secretary of the Interior undertaking to force applicants for the right-of-way authorized by Congress to accept the burdens, duties and obligations of a common carrier.

In the case of *Midland Oil Company, et al.*, v. *Susan Turner, et al.*, decided by the Circuit Court of Appeals April 11, 1910, 179 Fed. 74, the question of the Secretary's power to change by rule or regulation the terms of an existing lease was involved and the power denied. The lease was made under rules and regulations prescribed by the Secretary of the Interior and subject to his approval. It provided that it should not be assigned without the written consent of the lessor. Subsequently new rules were promulgated providing for assignment of such leases upon the consent of the Secretary of the Interior. The assignment of the lease was made without the consent of the lessor, but with the consent of the Secretary of the Interior. The assignment was held to be void.

> "The Secretary of the Treasury cannot by his regulations alter or amend a revenue law. All he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted."
>
> *Morrill* v. *Jones*, 106 U. S. 466, 1 Supreme Court 423, 27 L. ed. 267."

The acceptance of such terms under such conditions would not be valid and binding upon appellee. And in event that it should be held to be a valid rule, it has never been complied with, and the real test as to whether appellee is a common carrier must be determined by the manner of operating said pipe line.

The record shows that appellee was forced by extortionate freight rates to build this line; that the line extends from one point to another wholly within the oil field; that the price of crude oil has remained the same at both ends of this line; that during the six years it has operated the line solely in the movement of its own oil from the wells to its refineries, no person has tendered any oil for shipment; that there is no element of commerce in the operation of said pipe line; that the Interstate Commerce Commission by said order is seeking to compel appellee to become a common carrier and to assume all of the duties and liabilities not only of a common carrier but of a warehouseman in violation of its rights under the Constitution, and that said Commission will carry out said order and violate the rights of appellee unless it is enjoined. Therefore the temporary injunction asked for should have been granted, and there is no error in the decision of the lower court granting the protection due appellee under the Constitution.

Respectfully submitted,

ALBERT L. WILSON,
Solicitor for Appellee.

[fol. 889] EXHIBIT "C" TO THE PETITION FOR REHEARING

The Pipe Line Cases

Nos. 481, 482, 483, 506, 507, and 508

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1913

THE UNITED STATES, et al., Appellants,

v.

THE OHIO OIL CO.

THE UNITED STATES, et al., Appellants,

v.

STANDARD OIL CO.

THE UNITED STATES, et al., Appellants,

v.

STANDARD OIL CO. OF LOUISIANA

THE UNITED STATES, et al., Appellants,

v.

THE PRAIRIE OIL & GAS CO.

THE UNITED STATES, et al., Appellants,

v.

THE UNCLE SAM OIL CO.

THE UNITED STATES, et al., Appellants,

v.

ROBERT D. BENSON, et al., etc.

Appeals from the United States Commerce Court

Brief for The United States

[fol. 890] Index

	Original Print
Statement of the Case:	
In general	1–4
The facts	4–17
Specification of Errors	17
Argument	18–86
First Point: The Construction of the Act. Congress deliberately intended the act to apply to every interstate pipe line, and intended to compel every interstate pipe line to become a common carrier as a condition precedent to engaging in interstate commerce. Whether any particular pipe line had or had not been a common carrier prior to the passage of the act is wholly immaterial	18–40
I. The legislative history of the act, as shown by the debates in Congress, demonstrates its intent	19–32
To ascertain the evils at which an act is aimed, its legislative history, etc., the debates in Congress attending its enactment may be consulted	19
Am. Net. etc. Co. v. *Worthington*, 141 U. S. 468, 473.	
Binns v. *U. S.*, 194 U. S. 486, 495, 496.	
Blake v. *National Bank*, 23 Wall. 307, 319.	
Holy Trinity Church v. *U. S.*, 143 U. S. 457, 465.	
Jennison v. *Kirk*, 98 U. S., 453, 459.	
II. The language of the amendment is appropriate to express intent of Congress manifested by debates	32–37
III. The rule of construction followed in the *Commodities Case*, 213 U. S. 366, is not applicable here	37–40
[fol. 891]	
Second Point: Constitutionality of the Act. The act construed as applying to all interstate oil-carrying pipe lines and making it a condition upon their operation that they shall act as common carriers does not violate the Fifth Amendment to the Constitution	41–86

Original Print

I. The object of the Pipe Line Amendment, namely, to regulate interstate commerce in oil by protecting well owners and independent refiners from duress by pipe-line owners, rendering possible real competition and preventing monopoly of interstate commerce in oil, is one for which the authority of Congress may properly be exercised 42-45

Central Lumber Co. v. *South Dakota*, 226 U. S. 157.

Standard Oil Co. v. *United States*, 221 U. S. 1.

Waters-Pierce Oil Co. v. *Texas*, 212 U. S. 86.

II. The means employed, the prohibition of pipe lines except upon condition that they act as common carriers, has a real and substantial relation to the object sought, the prevention of monopoly, and is not arbitrary or beyond the necessities of the case 45-68

Every possible presumption is in favor of the validity of a statute 47

Austin v. *Tennessee*, 179 U. S. 343, 348.

Jacobson v. *Massachusetts*, 197 U. S. 11-31.

McCulloch v. *Maryland*, 4 Wheat. 315, 423.

Powell v. *Pennsylvania*, 127 U. S. 678-685.

Sinking Fund Cases, 99 U. S. 700.

[fol. 892[

Second Point—Continued

(1) The private operation of pipe lines carrying oil in interstate commerce tends to monopoly 49-57

Tex. & Pac. Ry. Co. v. *I. C. C.*, 162 U. S. 197, 210.

Standard Oil Co. v. *U. S.*, 221 U. S. 1.

Swift v. *U. S.*, 196 U. S. 375.

Report of Commr. of Corporations, entitled "Report on the Transpor-

Original Print

tation of Petroleum", (59th Cong., 1st sess., House Doc. 812).
Report of Interstate Commerce Commission (59th Cong., 2d sess., House Doc. 606).

(2) An appropriate means of reaching the evil was to prohibit the operation of interstate pipe lines save as common carriers 58

The operation of pipe lines as common carriers is beyond question commercially practicable, and has been universally recognized, as indicated by (*a*) *prior Federal legislation;* (*b*) *prior Federal decisions;* (*c*) *state legislation;* (*d*) *state decisions;* (*e*) *public records and reports;* (*f*) *current sources of public information, encyclopedias, textbooks, etc.* 60–65

III. Nothing in the Constitution prohibits the adoption by Congress of this means, so found to be in fact reasonable and appropriate to the accomplishment of its purpose 68–86

(1) The act is not in violation of the due process clause 69

C. B. & Q. Ry. Co. v. *Drainage Commrs.*, 200 U. S. 561, 592.
Hoke v. *U. S.*, 227 U. S. 308.
Lottery Case, 188 U. S. 358.
Noble State Bank v. *Haskell*, 219 U. S. 104.
Standard Oil Co. v. *U. S.*, 221 U. S. 1.
Waters-Pierce Oil Co. v. *Texas*, 212 U. S. 86.

[fol. 893]

Second Point—Continued.

(a) In many instances regulations of interstate commerce have been upheld which take the form of prohibition except upon such terms as would protect the public welfare 69–71

Original Print

Atlantic Coast Line v. *Riverside Mills*, 219 U. S. 186
Commodities Case, 213 U. S. 366.
Norfolk & Western Ry. Co. v. *Dixie Tobacco Co.*, 228 U. S. 593.
Southern Ry. Co. v. *Reid*, 222 U. S. 424, 438.

(b) That the condition is not expressed, but implied, is immaterial 72
Atlantic Coast Line v. *Riverside Mills, supra.*
Noble State Bank v. *Haskell, supra.*

(c) Nor is this sort of regulation confined to industries "affected with a public interest" in the technical sense 72–77
Engle v. *O'Malley*, 219 U. S. 128.
Lindsley v. *Natural Carbonic Gas Co.*, 220 U. S. 61.
Mugler v. *Kansas*, 123 U. S. 623, 669.
Noble State Bank v. *Haskell, supra.*
Ohio Oil Co. v. *Indiana*, 177 U. S. 190, 202, 210.

(d) Nor is the law violative of the due process clause in that, being general in its terms, it might cover any pipe lines which are not public markets for oil 77–78
Purity Extract Co. v. *Lynch*, 226 U. S. 192, 201.

See also:
Booth v. *Illinois*, 184 U. S. 425.
Commonwealth v. *Gilbert*, 160 Mass. 157.
Knoxville Iron Co. v. *Harbison*, 183 U. S. 13.
Lemieux v. *Young, Trustee*, 211 U. S. 489.

Original Print

Powell v. *Pennsylvania*, 127 U. S. 678, 685.
The Slaughter House Cases, 16 Wall. 36.

[fol. 894]

Second Point—Continued.

(2) Nor does the act violate the prohibition against taking property for public use without compensation 81
(a) As to the prohibition of private operation, there is not a taking ... 81
Commodities Case, 213 U. S. 366.
Mugler v. *Kansas*, 123 U. S. 623, 669.
Noble State Bank v. *Haskell*, *supra* (110).
See also:
C., B. & Q. Ry. Co. v. *Drainage Commrs.*, *Supra.*
L. & N. R. R. Co. v. *Mottley*, 219 U. S., *supra* 467.
The Slaughter House Cases, 16 Wall. 36.
Union Bridge Co. v. *U. S.*, 204 U. S. 364.
(b) But it may be said that in so far as the owners elect to operate the lines under the condition, there is a "taking" in the subjection to the quasi public use as common carrier. The thing so taken is, however, only the compensated, occasional use of the pipe line 82
Clark v. *Nash*, 198 U. S. 361.
L. & N. R. R. Co. v. *Central Stock Yards Co.*, 212 U. S. 132.
Otis Co. v. *Ludlow Co.*, 201 U. S. 140.
Appendix.—Statutes of various States with reference to pipe lines ..... I-LI

[fol. 895] Cases Cited

	Original Print
Am. Net etc. Co. v. *Worthington*, 141 U. S. 468	19
Armour Packing Co. v. *U. S.*, 209 U. S. 56	71
Atlantic Coast Line v. *Riverside Mills*, 219 U. S. 186	70, 72
Austin v. *Tennessee*, 179 U. S. 343	47, 48
Binns v. *U. S.*, 194 U. S. 486	19
Blake v. *National Bank*, 23 Wall. 307	19
Booth v. *Illinois*, 184 U. S. 425	80
Boyle v. *Smithman*, 146 Pa. St. 255	63
C. B. & Q. Ry. Co. v. *Drainage Commrs.*, 200 U. S. 561	41, 69, 82
Cardinel v. *Smith*, 5 Fed. Cas. No. 2395	34
Central Lumber Co. v. *South Dakota*, 226 U. S. 157	44
Clark v. *Nash*, 198 U. S. 361	56, 85
Columbia Conduit Co. v. *Com.*, 90 Pa. St. 307	63
Commodities Case, 213 U. S. 366	37, 70
Com. v. *Gilbert*, 160 Mass. 157	80
Continental Wall Paper Co. v. *Voight & Sons Co.*, 212 U. S. 227	44
Employer's Liability Cases (Second), 223 U. S. 1	44
Engle v. *O'Malley*, 219 U. S. 128	73
Forbell v. *City of New York*, 164 N. Y. 522	76
Gas Co. v. *Lowe et al.*, 52 W. Va. 662	63
Griffin v. *S. W. Pa. Pipe Line*, 172 Pa. St. 580	63
Hoke v. *U. S.*, 227 U. S. 308	69
Holden v. *Hardy*, 169 U. S. 366	45
Holy Trinity Church v. *U. S.*, 143 U. S. 457	19
I. C. C. et al. v. *B. & O. R. R. Co.*, 225 U. S. 326	4

[fol. 896]

Jennison v. *Kirk*, 98 U. S. 453	19
Jacobson v. *Massachusetts*, 197 U. S. 11	47
Kansas v. *Colorado*, 206 U. S. 46	76
Knoxville Iron Co. v. *Harbison*, 183 U. S. 13	44, 80
Lemieux v. *Young, Trustee*, 211 U. S. 489	80
Lindsley v. *Nat. Carbonic Gas Co.*, 220 U. S. 61	76
Lottery Case, 188 U. S. 358	69
L. & N. R. R. Co. v. *Central Stock Yards Co.*, 212 U. S. 132	83
L. & N. R. R. Co. v. *Mottley*, 219 U. S. 467	71, 82
McCulloch v. *Maryland*, 4 Wheat. 315	42, 46

	Original Print
Mfrs. Gas etc. Co. v. *Indiana Nat. Gas Co.*, 155 Ind. 461	76
Minnesota v. *Barber*, 136 U. S. 313	41
Mugler v. *Kansas*, 123 U. S. 623	74, 82
Muller v. *Oregon*, 208 U. S. 412	45, 60
Mutual Loan Co. v. *Martell*, 222 U. S. 225	44
Nat. Transit Co. v. *Weston*, 121 Pa. St. 485	63
Noble State Bank v. *Haskell*, 219 U. S. 575	59, 69, 72, 73, 82
N. & W. Ry. Co. v. *Dixie Tobacco Co.*, 228 U. S. 593	71
Ohio Oil Co. v. *Indiana*, 177 U. S. 190	56, 75
Oklahoma v. *Kans. Nat. Gas Co.*, 221 U. S. 229	76
Otis Co. v. *Ludlow Co.*, 201 U. S. 140	83, 84
Patterson v. *Bark Eudora*, 190 U. S. 169	44
Powell v. *Pennsylvania*, 127 U. S. 678	47, 80
Pumpelly v. *Green Bay Co.*, 13 Wall. 166	83
Purity Extract Co. v. *Lynch*, 226 U. S. 192	80
Shollenberger v. *Pennsylvania*, 171 U. S. 1	60
Silz v. *Hesterberg*, 211 U. S. 31	80
Sinking Fund Cases, 99 U. S. 700	47
Slaughter House Cases, 16 Wall. 36	80, 82
Standard Oil Co. v. *U. S.*, 221 U. S. 1	7, 15, 43, 49

[fol. 897]

Strickley v. *Highland Boy Gold Mining Co.*, 200 U. S. 527	56
Sugar Lighterage Case (*U. S.* v. *B. & O. R. R. Co.*), 225 U. S. 306	4
Swift v. *U. S.*, 196 U. S. 375	57
Tex. & Pac. Ry. Co. v. *I. C. C.*, 162 U. S. 197	55
Union Bridge Co. v. *U. S.*, 204 U. S. 364	82
United States v. *B. & O. R. R. Co.* (*Sugar Lighterage Case*), 225 U. S. 306	4
W. Va. Transp. Co. v. *Ohio River Pipe Line Co.*, 22 W. Va. 600	63
W. Va. Transp. Co. v. *Volcanic Oil & Coal Co.*, 5 W. Va. 382	63

[fol. 898] THE PIPE LINE CASES

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1913

No. 481

THE UNITED STATES, et al., Appellants,

v.

THE OHIO OIL CO.

No. 482

THE UNITED STATES, et al., Appellants,

v.

STANDARD OIL CO.

No. 483

THE UNITED STATES, et al., Appellants,

v.

STANDARD OIL CO. OF LOUISIANA

No. 506

THE UNITED STATES, et al., Appellants,

v.

THE PRAIRIE OIL & GAS CO.

No. 507

THE UNITED STATES, et al., Appellants,

v.

THE UNCLE SAM OIL CO.

No. 508

THE UNITED STATES, et al., Appellants,

v.

ROBERT B. BENSON et al., etc.

Appeals from the United States Commerce Court

Brief for the United States

Statement of the Case

These cases involve the construction and constitutionality of the amendment of 1906 (the so-called "Pipe Line Amend-[fol. 899] ment," Act of June 29, 1906, 34 Stat. 584) to

the first section of the Act to Regulate Commerce, which, in so far as material to this case, is as follows:

> That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, * * * who shall be considered and held to be common carriers within the meaning and purpose of this Act.

The present contentions of the Government are these:

First. The amendment of 1906 applies to all oil-carrying pipe lines engaged in interstate commerce and requires them as a condition to further continuance in that commerce to act as common carriers subject to the Interstate Commerce Commission, and this, whether they had been common carriers prior to 1906 or not. On this point the court below was with the Government.

Second. The amendment so construed is a constitutional exercise of the Federal power to regulate commerce. It is designed and reasonably calculated to prevent the monopolization of interstate commerce in oil. On this point the court below was against the Government; Judge Mack, dissenting. [fol. 900] The cases at bar in all substantial respects are identical. They are appeals from interlocutory decrees of the Commerce Court granting preliminary injunctions against an order entered by the Interstate Commerce Commission which directed these appellee pipe lines and certain others (13 in all) to file with the Commission schedules of their rates and charges for the transportation of oil as required by section 6 of the Act to Regulate Commerce. Some obeyed. The appellees herein did not obey, and brought suit in the Commerce Court for the annulment of the Commission's order. Answers were filed by the United States and the Commission; motions were made for preliminary injunctions; the cases were fully heard; and on March 11, 1913 (the Commission meanwhile having postponed and repostponed the effective date of the order), the court issued its preliminary injunction in favor of the petitioners and appellees.

The injunction was accompanied by two opinions, all of the judges adopting the Government's interpretation of the

act, but a majority (3 to 1) holding that as so construed the act was violative of the Fifth Amendment to the Constitution.

These opinions were very full. The court rested its decision upon grounds which completely ended the Government's case. As stated in the majority opinion, it found that—

> Whilst each case differs from the others in various particulars, and perhaps in respects which would be important in other connections, the fundamental ques- [fol. 901] tions here involved are common to them all and arise out of facts which are practically undisputed;

and the majority opinion concludes with the words:

> Without reference to other considerations which might justify preliminary injunctions in these cases, we have purposely placed our decision upon grounds which in effect determine the controversy, and we have done so to avoid occasion for protracted trials and to aid an early review by the court of last resort.

The Government, therefore, has appealed directly from the interlocutory decrees of the Commerce Court, since this court will examine the merits of a preliminary order where it appears that the granting of it was a decision of the whole controversy on the merits. *Int. Com. Commission et al.* v. *B. & O. R. R. Co.*, 225 U. S. 326. (See also the *Sugar Lighterage Case, U. S.* v. *B. & O. R. R. Co.*, 225 U. S. 306, 326.)

Unless otherwise stated, citations in this brief will be to Record No. 481.

The Facts

Of the industry in general it should be observed that the principal crude oil fields in the United States may be described as (1) the Appalachian field, covering parts of the States of New York, Pennsylvania, West Virginia, Kentucky, and Tennessee; (2) the Illinois, Indiana, Ohio field, covering parts of those States; (3) the Mid-continent field, covering parts of the States of Kansas and Oklahoma; and (4) the Gulf field, covering parts of the States of Louisiana [fol. 902] and Texas. There are smaller fields in the States of California, Colorado, Wyoming, Michigan, and Missouri. The last official statistics available showed the total pro-

duction of crude oil in the United States for the year 1910 as 209,556,048 barrels, of the value of $127,896,328. With few exceptions the refineries are not located in the oil fields but at marketing centers. The crude oil is transported from the fields to the various refineries by the operation of approximately 40,000 miles of pipe lines. The transportation of crude oil by pipe lines has been found so much less expensive than transportation by rail that it may be said that practically no crude oil intended for refining is now transported by rail.

The facts peculiar to the respective appellees may be summarized as follows:

No. 481. The Ohio Oil Company; an Ohio corporation, with a capital stock of $10,000,000; produces and purchases crude oil in the Illinois-Indiana-Ohio and Appalachian fields; transports the same in trunk pipe lines from those fields to Centerbridge, Pa., an unincorporated village of 100 inhabitants, where it is said to make delivery to the Standard Oil Company of New Jersey (R. 2). It has no refineries, and prior to 1906 it owned no pipe lines. For a short distance in the State of Ohio its line is laid on the right of way of the Erie Railroad Company, and for a similar distance in the State of Pennsylvania on the right of way of the Pennsylvania Railroad Company.

[fol. 903] Recently its entire capital stock of $10,000,000, with the exception of $150, was owned and controlled by the Standard Oil Company of New Jersey (221 U. S. 1, 73), which now claims to own the delivery end or section of pipe line from Centerbridge, Pa., to New York Harbor. The appellee produces, purchases, and transports crude oil, with the Standard Oil Company of New Jersey as its principal patron.

This company was a party defendant in the Standard Oil Trust prosecution, and by the decree was ordered to be severed from the parent company (221 U. S. p. 71n).

The case is here on the petition, answer, affidavits, and intervening petition of the Cornplanter Refining Company.

No. 482. Standard Oil Company; a New Jersey corporation, with a capital stock of $110,000,000, and with broad charter powers. This company is engaged chiefly in refining oil, but claims to own and operate three pipe lines affected by the order in question, which extend from Unionville, in the State of New York, through New Jersey, to

New York Harbor; from Centerbridge, in the State of Pennsylvania, through New Jersey, to New York Harbor, and from Fawn Grove, in the State of Pennsylvania, through the State of Maryland, to the city of Baltimore.

In view of what appears later with reference to the meaning and purpose of the so-called Pipe Line Amendment, the circumstances under which this appellee acquired its pipe lines are most interesting. Prior to 1906 the appellee [fol. 904] had gathered to itself a large number of subsidiary corporations. Among these were National Transit Company, with an authorized capital stock of $25,455,200, of which the Standard Oil Company of New Jersey owned $25,451,650; New York Transit Company, with an authorized capital stock of $5,000,000, all owned by the Standard Oil Company of New Jersey; Standard Oil Company of New York, with an authorized capital stock of $15,000,000, all owned by the Standard Oil Company of New Jersey. The court will recall that later these four companies were held to be parties to an illegal combination and conspiracy for the purpose of monopolizing the purchase, transportation, refining, distribution and sale of crude petroleum and its products, in violation of the Sherman Anti-trust Act; and the ownership of these stocks by the Standard Oil Company of New Jersey, with the resulting power arising therefrom, was likewise held to be illegal. *Standard Oil Co. of New Jersey et al.* v. *U. S.*, 221 U. S. 1.

National Transit Company, a corporation under the laws of the State of New York, in 1906 was and still is a common carrier of oil by means of pipe lines and engaged in interstate commerce as such. The principal line extended from Ohio and Western Pennsylvania to Olean, N. Y., thence eastward to the southern part of that State to Unionville, and thence southeastward through New Jersey to New York Harbor. Another line extended from northwestern Pennsylvania southeastward to Millway, thence to Fawn Grove, [fol. 905] Pa., and thence across the State of Maryland to Baltimore. These trunk lines formed a substantial part of the vast system or network of pipe lines in the United States, and through them and their connections crude oil was being transported by the National Transit Company uninterruptedly from the oil fields east of the Mississippi River to New York Harbor, and to Baltimore.

New York Transit Company, a second subsidiary of the Standard Oil Company, was organized under the laws of

Pennsylvania, and was and is a common carrier of oil by means of pipe lines. In 1904 it took over from the National Transit Company its trunk pipe line from Olean to New York Harbor, and through it transported oil without interruption from Olean, N. Y., through New Jersey, to New York Harbor. It was admittedly engaged in interstate commerce in crude oil by means of its pipe lines conducted in the States of New York and New Jersey, but it did not, nor does it now, refine or purchase crude oil, or transport any oil owned by it.

In 1906 the Standard Oil Company of New Jersey and the Standard Oil Company of New York were engaged in refining crude oil in the States of New York, New Jersey, and Maryland and selling the products thereof. The subsidiary companies, National Transit Company and New York Transit Company, received crude oil at the various fields, transported it to New York harbor and Baltimore and de- [fol. 906] livered the same to the Standard Oil Company of New Jersey and the Standard Oil Company of New York at their refineries.

On the 15th of February, 1905, the House of Representatives adopted a resolution requesting the Secretary of Commerce and Labor to investigate the cause or causes of the low price of crude oil or petroleum in the United States, and the unusually large margins between the price of crude oil or petroleum and the selling price of refined oil and its products, "and to make early report of its findings, according to law, to the end that such information may be used by Congress as a basis for legislation, or by the Department of Justice as a basis for legal proceedings." (Vol. 39, Cong. Rec., Feb. 15, 1905, 2666.) On March 4, 1905, 17 days later, the House of Representatives of the Fifty-eighth Congress adjourned without day.

Eight months elapsed, during which this investigation was actively prosecuted. On the 3d day of November, 1905, the board of directors of the National Transit Company and the New York Transit Company, whose capital stock was owned and whose boards were dominated by the Standard Oil Company of New Jersey, passed resolutions authorizing the alleged sale to the Standard Oil Company of New Jersey of that portion of their respective pipe-line properties extending through the States of New Jersey and Maryland.

The first session of the Fifty-ninth Congress convened on the 4th of December, 1905. It was devoted almost entirely to the consideration of railroad rate regulation and the amendment of the Act to Regulate Commerce. Simultane-
[fol. 907] ously the Department of Commerce and Labor was continuing the investigation of the oil industry, in pursuance of the resolution.

The Report of the Commissioner of Corporations on the subject of transportation and freight rates in connection with the oil industry was transmitted by the President to Congress; this so-called Pipe Line Amendment was introduced and freely debated, and on the 29th of June, 1906, the amended act to regulate commerce was approved, and by joint resolution August 28, 1906, or 60 days after its approval, was fixed as the day upon which it should take effect.

On July 17, 1906, 18 days after the passage of the act, deeds are said to have been delivered by the National Transit Company and the New York Transit Company, respectively, to the Standard Oil Company of New Jersey, conveying to the latter the sections or ends of these pipe lines in the States of New Jersey and Maryland, and on the 28th of August, 1906, when the act went into effect, the alleged operation of these sections by the Standard Oil Company of New Jersey commenced.

The mere recital of these facts and dates is convincing proof that these conveyances were made with a deliberate purpose to evade, if possible, the legislation foreshadowed by the Report of the Commissioner of Corporations, which had been debated in Congress, and which had been enacted into law before the conveyances were passed.

Unionville is an incorporated village in Orange County, N. Y., with a population of 250; Fawn Grove is an incor-
[fol. 908] porated village in York County, Pa., with a population of 240; Centerbridge is an unincorporated village in Pennsylvania with a population of 100. No crude oil is produced, purchased (except as claimed by the Standard Oil Co.), sold or refined at Unionville, Centerbridge, or Fawn Grove; and, save for an alleged measurement at those points of the quantity of the oil in transit, the oil flows with practical continuity and the transportation now is substantially as it was before New York Transit Company and National Transit Company conveyed portions of their lines already described to the appellee Standard Oil Company.

It may be further stated that the pipe lines in question were located in part upon or across the rights of way of various railroad companies, upon or across public highways, and that "said pipe lines are and always have been located, maintained, and operated, over public highways or on the rights of way of railroad companies," and "that petitioner's predecessors in title did, at certain points, lay the pipe lines in question along or across public highways and streets in said State," and "that at various points petitioner's pipe lines are laid and are being operated upon, along, or across the rights of way of railroad companies engaged in interstate commerce." (No. 482; R. 86-88.) In its answer the United States alleges that the predecessor in title of petitioner did, for long distances, lay said pipe line in, along, and across certain of the navigable rivers of the United States, including the Hudson River, any private [fol. 909] use whereof is contrary to the public policy of the United States. (No. 482; R. 35.) Petitioner does not deny that its pipe was so laid, though it does deny that what it did in that behalf is contrary to the public policy of the United States.

The case is here on petition, answer, affidavits and certain stipulated facts.

No. 483. Standard Oil Company of Louisiana; a Louisiana corporation, with a capital stock of $5,000,000 and broad charter powers (R. 12). It produces crude oil in the Caddo field in Louisiana and purchases crude oil produced in the Mid-continent field in the States of Kansas and Oklahoma, which is brought by a pipe line, continuous in effect if not in name, from the Mid-continent field to the refinery of petitioner at Baton Rouge.

The Prairie Oil & Gas Company owns and operates a portion of this trunk pipe line which is located in the Mid-continent field in the States of Kansas and Oklahoma (R. 28). Oklahoma Pipe Line Company is a corporation organized under the laws of the State of Oklahoma as a common carrier of crude oil with the power of eminent domain. It owns the section of this trunk line which extends from a point in Oklahoma called Creek, in the south central part of the Mid-continent field, to McCurtain, a town in southeastern Oklahoma at or near the Arkansas line. At this point The Prairie Oil & Gas Company again resumes the ownership of the pipe line to and through the State of Arkansas to Ida, in the extreme northwestern part of Louisiana,

[fol. 910] where the appellee commences its ownership. Thus it appears that while the pipe line is practically continuous from the Mid-continent field to Baton Rouge, it is owned by sections, according to the States which it traverses. Physically it is a continuous transportation, although conducted under different titles.

Ida, like the villages of Unionville, Centerbridge, and Fawn Grove, is not a place where oil is refined, but is simply a pumping station on this through line from the Mid-continent field to Baton Rouge. It is unincorporated, with a population approximating 200 (R. 59, 60). The section from Ida to Baton Rouge is about 266 miles in length and is useless for transporting oil from the Mid-continent field to Baton Rouge unless operated jointly with the remaining sections of the through line. This pipe line also at various points crosses public highways and crosses and is laid upon the right of way of railroad companies. The Oklahoma Pipe Line Company, which operates that portion of the line heretofore described, filed no petition to set aside the order of the Commission directing it to publish and file tariffs, and, as to it, the order is in full force and effect.

The case is here on petition, answer, affidavits, and certain stipulated facts.

No. 506. The Prairie Oil & Gas Company; a Kansas corporation, organized in 1904, with a capital stock of $300,000, which was increased from time to time and is now $20,000,000, of which $18,000,000 has been issued and sold (R. 3). It produces and purchases crude oil in the Mid-continent field and transports the same from that field [fol. 911] in a 12-inch trunk line to Griffith, Ind., near the town of Whiting, where the refineries of the Standard Oil Company of Indiana are located. It also has a line in the States of Oklahoma, Arkansas, and Louisiana, connecting in the manner hereinbefore described with the lines of the Oklahoma Pipe Line Company and the Standard Oil Company of Louisiana. Its line to Griffith, Ind., is the only pipe line extending from the Mid-continent field eastward. This is laid in part over the right of way of the Atchison, Topeka & Santa Fe Railway Company from Sibley, Mo., to Joliet, Ill., a distance of about 500 miles (No. 506; R. 32, 33), and portions of the company's lines are laid over the public domain in the Indian Territory and Oklahoma (No. 506; R.

41 to 61, inclusive). The Mid-continent field now yields approximately one-fourth of the total production of crude oil in the United States. The Prairie Oil and Gas Company owns some 1,833 producing oil wells in this field, with an aggregate output approximating 11,557 barrels per day. It purchases about 70,000 barrels per day and claims to have a market and outstanding contracts for the delivery of 100,000 barrels per day. It has accumulated in storage and now holds more than 40,000,000 barrels—almost the total annual output of the entire field.

It is interesting to note that while others of these appellees protest against becoming common carriers because it would lead to confusion of grades in their pipes when carrying diverse grades of oil, The Prairie Oil & Gas Company protests on the ground that it is designedly mingling [fol. 912] in its pipes various grades of oil and does not desire to refrain from so doing.

While the line of The Prairie Oil & Gas Company ends at Griffith, Ind., it claims to have been able by shipment over common-carrier lines east of that point to establish a trade for its Mid-continent oil in the States of Indiana, New York, Pennsylvania and New Jersey.

Until December, 1911, the entire capital stock of The Prairie Oil & Gas Company was owned by the National Transit Company of New York, a subsidiary corporation of the Standard Oil Company of New Jersey. The Standard Oil Company of New Jersey also owned and controlled the entire capital stock of the Standard Oil Company of Indiana, which was and is the principal patron of the Prairie Oil & Gas Company. These several companies were held in *Standard Oil Company of New Jersey* v. *United States*, 221 U. S. 1, to be parties to an illegal combination and conspiracy for the purpose of monopolizing the purchase, transportation, refining, distribution, and sale of crude petroleum and its products, in violation of the Sherman Act.

The case is here on petition, affidavits, answer of the Interstate Commerce Commission, and motion by the United States to dismiss the petition.

No. 507. The Uncle Sam Oil Company; a corporation organized in 1905 under the laws of the Territory of Arizona, with power, *inter alia*, to transport crude oil by means of pipe lines. It is a foreign corporation transacting

business in Oklahoma and Kansas. It produces and pur- [fol. 913] chases crude oil in the Mid-continent field, particularly in Oklahoma, and transports the same by pipe lines to Cherryvale, Kans., where it owns and operates a refinery (R. 18). Its facilities are located and its business is carried on entirely within the Mid-continent field.

A part of its pipe line is laid for a distance of 25 miles over the public domain in the Indian Territory. The Government insists that this was done under regulations prescribed by the Secretary of the Interior, providing that every pipe line so laid shall be held to be a common carrier (R. 43-45). The appellee, however, avers that it was not aware of these regulations and did not intend to assent to the same. The laws of Kansas and Oklahoma (see Appendix) impress upon oil-carrying pipe lines the character of common carriers.

The case is here on petition, answer and affidavits.

No. 508. Robert D. Benson et al., doing business as the Tidewater Pipe Company, Limited, is a limited co-partnership under the laws of Pennsylvania, with a capital stock of $625,000 (R. 7). It produces and purchases crude oil in the Indiana-Illinois-Ohio and Appalachian fields and transports the same by pipe lines from those fields to Bayonne, N. J., on New York Harbor, where it makes delivery to the Tidewater Oil Company, a New Jersey corporation, with a capital stock of $19,967,000, its sole patron with refineries at Bayonne.

The partners in the Tidewater Pipe Company are large owners of the stock of the Tidewater Oil Company. The [fol. 914] Standard Oil Company of New Jersey is, or was until quite recently, also the owner of a part of the capital stock of that company. The trunk lines in question are 6 inches in diameter. The first was built in 1878-79, from Rixford, Pa., to Williamsport, Pa. In 1884 the line was extended to Tamanend, Pa., and in 1888 to Bayonne. Another trunk line extends from Stoy, Crawford County, Ill., through the States of Illinois, Indiana, Ohio, and Pennsylvania, to Rixford.

It is alleged in the answer of the United States that the appellee has "for long distances—the exact distances this respondent is unable at this time to state—laid its said lines along the streets of the municipalities and the public highways of the various counties and States through

which the pipe lines run" (No. 508; R. 8); and this is not denied by the petitioner.

The case is here on petition, answer, affidavits, and intervening petition of the Wellsville Refining Company.

Specification of Errors

The assignments of error upon the part of the appellant may be found in the several records, as follows:

No. 481, p. 148; No. 482, p. 94; No. 483, p. 91; No. 506, p. 71; No. 507, p. 57; No. 508, p. 57. It is not necessary to repeat or summarize them here. There are some slight variances, brought about by diverse facts; the assignments are similar in substance, however, and present in varying phases the crucial question—*the contitutionality vel non of the Pipe Line Amendment of 1906.*

[fol. 915] THE ARGUMENT—FIRST POINT

The Construction of the Act

Congress deliberately intended the act to apply to every interstate pipe line. It intended to compel every interstate pipe line to become a common carrier as a condition precedent to engaging in interstate commerce. Whether any particular pipe line had or had not been a common carrier prior to the passage of the act is wholly immaterial.

Both the Commerce Court and the Interstate Commerce Commission agreed in adopting this construction of the act.

The Commerce Court said (No. 481; R. 105):

> In short, we agree with the Commission in what is said in the following excerpts from its report in the pipe line proceeding:
>
> "This seems to be the plain meaning of the act, that all pipe lines, carrying oil from one State to another State, no matter what their previous status, should be thenceforward considered and deemed to be common carriers. And to uphold this construction, reference may be made to the history of this provision. • • •
>
> "Throughout the discussion there is abundant evidence that Congress passed this act for the purpose of subjecting all interstate pipe lines carrying oil to Fed-

eral regulation, and took this action consciously, in the presence of the very constitutional question now raised as to its power."

[fol. 916] The Pipe Line Amendment, Act of June 29, 1906, 34 Stat. 584, added to the first section of the Act to Regulate Commerce the words italicized below:

> That the provisions of this act shall apply to *any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, * * * who shall be considered and held to be common carriers within the meaning and purpose of this Act.*[1]

I. The Legislative History of the Act Demonstrates Its Intent

To ascertain the evils at which the act was aimed, its legislative history, the amendments that were offered and rejected during its passage, and the general history of the times, we may with propriety consult the debates in Congress attending its enactment.

Jennison v. *Kirk*, 98 U. S. 453, 459;
Holy Trinity Church v. *U. S.*, 143 U. S. 457, 465;
Am. Net. etc. Co. v. *Worthington*, 141 U. S. 468, 473;
Binns v. *U. S.*, 194 U. S. 486, 495, 496;
Blake v. *National Bank*, 23 Wall. 307, 319.

[fol. 917] Such an examination in the present instance renders it indisputably clear that the evil aimed at was the monopoly of the oil business by the Standard Oil Company, a monopoly largely, if not chiefly, due to the ownership or control by that corporation of 90% of the

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[1] As originally enacted this passage read consecutively, without the clause indicated by asterisks. This clause was inserted by the act of June 18, 1910, 36 Stat. 539, 544, and is as follows: "and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country."

pipe lines, and the unconscionable manner in which that corporation had asserted against the independent well owners the advantage resulting therefrom. The exact connection between private pipe lines and monopoly will be more fully discussed hereafter, but for the purpose of finding out what Congress meant by the legislation in question, which is all we are discussing at this point, we are interested only in the fact that Congress undoubtedly believed that such connection did in fact exist, and that the only practical means of eradicating the evil was to prohibit interstate traffic in oil by means of pipe lines except upon condition that the pipe line owners should act as common carriers.

The scheme of railroad legislation contained in the Hepburn Act of 1906 did not, as originally proposed, have any reference to pipe lines. Congress had, however, at an earlier date directed the Bureau of Corporations to enter into an extensive investigation on the subject of the transportation of petroleum. On May 4, 1906, while the debate upon the Hepburn Act was in full progress in the Senate, the Commissioner's report was transmitted to Congress. The gist of the report is contained in the following sentences:

> Chief among the advantages which, aside from present railroad discriminations, the Standard possesses are [fol. 918] the immense pipe line systems of the Company
>
> * * *
>
> The Standard Oil Company has all but a monopoly of the pipe lines in the United States. Its control of them is one of the chief sources of its power. (59th Cong., 1st Sess., House Doc. 812, pp. 29, 37.)

The report was transmitted to Congress by the President, accompanied by a message urging immediate action. (40 Cong. Rec. 6358.)

Hardly had this report and message been received when Senator Lodge arose and offered practically in its present form (the differences being immaterial here) the amendment concerning pipe lines. (40 Cong. Rec. 6361.) Senator Foraker immediately objected to Senator Lodge's amendment *on the ground that it was not restricted to pipe lines which were already common carriers, saying:*

> Mr. President, I do not want to make any opposition to the Senator's amendment, but it occurs to me that *the amendment ought to be further amended, so as to*

provide that it shall apply only to pipe lines operated for the public. I do not understand how you would compel a man who has a private pipe line of his own to become a common carrier. * * * I think such a limitation ought to be put in the Senator's amendment by an amendment to the amendment that it shall apply to all pipe lines that are carrying for the public, and not to private lines that an individual or a single corporation may have laid down and put into operation for its own benefit. (40 Cong. Rec. 6361.)

[fol. 919] Senator Nelson replied:

In reference to the amendment suggested by the Senator from Ohio to the amendment of the Senator from Massachusetts, I desire to state that *if that amendment is adopted it will practically nullify the provision, because every one of these pipe lines can say "we refuse to do business for the public."* (40 Cong. Rec. 6365.)

Senator Lodge followed Senator Nelson, saying:

Mr. President, the purpose of this amendment is to bring the transportation of oil and other commodities within the interstate commerce law. Oil is one of the greatest articles of interstate commerce carried in this country, and it is now absolutely outside and beyond any Government regulation whatever. * * * But the amendment suggested by the Senator from Ohio (Mr. Foraker) to my amendment, to the effect that no pipe line, unless it carries for the public, shall come under this rule, will, as the Senator from Minnesota (Mr. Nelson) says, *absolutely destroy the value of my amendment.* (40 Cong. Rec. 6365.)

As the debate continued the connection between private pipe lines and monopoly was more and more clearly brought out. It was shown that oil must be carried great distances from the wells to refineries and principal markets; that, because of the cost of railroad or other forms of transportation, it is, from a practical point of view, as impossible for an independent producer to market his product without a pipe line as it would be if he had no right of egress [fol. 920] from his lands; that pipe lines are of such enor-

mous length, and hence so enormously expensive, that the construction of individual ones by independent well owners and refiners is out of the question; and that as a result the independent well owner is completely within the power of the owner of the pipe line—a power which had in fact been pitilessly used.

The following excerpts are illustrative:

> Mr. McCumber: If they are carrying their own goods and no goods of the public, how is the public interested one way or the other in the matter of their carrying their own goods through their own pipe line from one State to another?
>
> Mr. Tillman: Let me answer the Senator from North Dakota in this way: Take West Virginia, whence, I believe, comes the gas in the case mentioned by the Senator from Ohio. Of course that gas is not going down yonder three or four hundred miles without pressure, and therefore it comes from the surrounding country where originally tapped, and the gas company which has bored its wells may be robbing the landowners around it of their gas, because it has great capital and the facilities for sending it off and selling it, while the landowner, who is not able to pipe it to the market, is not allowed to pipe it through the established pipe line, because Congress will not help him. That is my conception of a just and proper reason. (40 Cong. Rec. 6362.)

* * * * * * *

[fol. 921] Senator Lodge said:

* * * * * * *

> There are twenty-eight principal pipe lines in the United States, for the most part trunk lines. There are fourteen local or gathering lines. Twelve of the principal lines are combined in one system under one control, extending from Indian Territory and from Tennessee to the Atlantic seaboard. Five other principal lines form a system under one control, extending from West Virginia and Ohio through the Pennsylvania oil fields to Philadelphia. (*Id.* 6365.)
>
> Now, Mr. President, the oil is brought to the trunk lines through small local feeding and gathering lines,

as a rule. *There are practically two great companies* that control pipe lines engaged in interstate commerce. One is the *Standard Oil*, which is said, roughly, to control 90 per cent. I do not know whether that is correct or not. The other is the *Pure Oil*. *They do not own the wells, and they buy the oil of the well owner*, and the charge for the transportation is taken out of the price, as appears in the copies of the certificates and receipts which I have here.

Those well owners are absolutely at the mercy of the pipe lines. I have had cases brought to me, which in this fifteen-minute debate I can not enlarge upon, where an independent refinery has been deprived of its supply of oil because it would not agree to the prices of the pipe lines. *A small well owner is compelled to take the price that is offered by the controller of the trunk line.*

[fol. 922] This is not a case of a transportation company owning the property, like a railroad owning a coal mine. *It is exactly like a railroad buying the coal of a coal miner and transporting it.* * * * The pipe line companies buy the oil they use in their own refineries and *owing to the fact that they buy the oil, if you put in the words "carry for the public," the pipe lines go right out from under this amendment* in my judgment. * * * It is simply to give relief, if relief is sought, to those who find that they are *not fairly treated* * * * *by the pipe lines through which alone, practically, they can get their commodity to market.* (40 Cong. Rec. p. 6366.)

Excerpt from a letter inserted into the Record by Senator Lodge as part of his speech:

I am a producer of petroleum in West Virginia and a refiner of petroleum in New York Harbor, and have considerable trouble in procuring a quantity of crude oil sufficient to run our works.

I feel aggrieved at the treatment by the Standard Oil Company, owner of the pipe lines, and the Pure Oil Company, controller of other pipe lines that run in that field. Both companies refuse to deliver to me the oil I produce, and I have to sell it to both at the prices they make.

I understand you are now trying to frame some bill that will put the people on an equality; it would be well for you to know the condition of the business and how both companies have created and keep a monopoly in the business.

[fol. 923] *Eureka Pipe Line.*—This company is owned by the Standard Oil Company. It passes through Ohio and West Virginia. It receives into its line oil that is produced on a lease I own in Wetzel County, W. Va. It takes this oil to United Pipe or National Transit Lines and is pumped through that system to Jersey City.

I have made application to the Standard Oil Company for transportation of my oil and offered to pay them the usual gathering and transportation charges. They refuse to deliver me my own oil and I have to sell it to them at their price, although I am ready to pay a premium of 10 or 20 cents a barrel over the market price and the current transportation rates.

They claim that the "Eureka Pipe Lines" is not a public carrier; that it is a private concern, and is not subject to the laws that regulate public carriers. The National Transit Line is a public carrier, but on account of the receiving or initial lines being a private concern, they need not take the oil and are not amenable to the law as public carriers are.

. . . . . .

The object of this letter is to show the condition of pipe lines that are owned by private parties or co-partnerships and not common carriers that work in connection with other lines that are common carriers.

In my opinion all pipe lines should be common carriers, and any producer of oil *anywhere* should be at liberty to sell the certificates of their oil to anyone wishing to purchase them and the oil should be re-[fol. 924] ceived and delivered to all on equal conditions. This would create an open market and the producers could get all that their product was worth.

Common carriers.—They refuse to deliver the oil to refiners where they want it, and generally deliver it in some out-of-the-way place that will cost more to take it from the point of delivery than it can be brought by rail from the point of production.

Difference in cost between rail and pipe-line rates.—Oil can be handled by pipe lines at about one-tenth what it will cost by rail.

The oil monopolies owning pipe lines generally make the outside public do their business by rail, they, through influence making rail rates while they do their business by pipe lines.

Marketing crude petroleum.—On account of the interest controlling pipe lines, viz, *Standard Oil Company* and *Pure Oil Company,* refusing to receive oil for transportation and deliver it to the owners of the oil, it prohibits an open market for crude petroleum. The producer has to sell it to the Standard Oil Company or its agents at the *Standard Oil Company's price,* and to the Pure Oil Company or the Producers and Refiners' Line (which is owned by the Pure Oil Company) *at their price,* although the owners of the oil stand ready, and in my case *I have offered a premium of 10 cents per barrel* plus all transportation and charges for my oil. (40 Cong. Rec. 6368.) (Italics theirs.)

Senator Lodge's amendment passed precisely as offered so far as our purposes are concerned. It was later [fol. 925] twice reconsidered, with the same result. For the first reconsideration, see 40 Cong. Rec. 6895, 6896, 6900; for the second, see 40 Cong. Rec. 6999. Again, Senator Foraker bitterly objected to the amendment in a speech, the keynote of which is the following sentence:

> • • • I say you have no right to make a common carrier out of a private individual who is transporting for his own particular business and has no thought or purpose of accommodating the public • • •. The way to remedy this is • • • by adding, after the word "transportation," as I suggested to the Senator from Massachusetts when he offered it, the words *"for the public."* (40 Cong. Rec. 6999.)

The following dialogue took place between him and Senator Culberson:

> Mr. Culberson. *I ask the Senator if his purpose is not carried out in the phrase beginning at line 3, page 2, "who shall be considered and held to be com-*

mon carriers within the meaning and purpose of this act," because in the case he mentions the company will not be a common carrier when only carrying gas for itself, and it will not be brought within the meaning of this act according to its own provision?

Mr. Foraker. *I have not heard of anybody putting that interpretation on that language.* I called attention to it when the matter was under consideration a few days ago, and a different view was taken of it. It does not make it very clear, but if you were to put in [fol. 926] the words "for the public," after "transportation," then there could not be any question about it, and I can not understand why that should be objected to. If there is anybody transporting in a pipe line any commodity, no matter what it may be, for the public——(40 Cong. Rec. 7000.)

Senator Foraker's proposition was rejected after Senator Lodge had again explained its purpose as follows:

* * * *If you put in the words "transportation for hire" or "transportation for the public" you absolutely destroy this amendment* so far as its effectiveness is concerned. The method of getting the oil is, as a rule, that the Standard Oil Company or the Pure Oil Company, which are the two great carriers of oil, *buy it of the well owner* and carry it, and they would immediately say they were not carrying for the public; that they were carrying for themselves. That is the reason why the word "public" or "transportation for hire" put in there would immediately wreck this amendment.

My object, I state frankly, in this amendment is to bring the pipe lines of the Standard Oil Company within the jurisdiction of the Interstate Commerce Commission. I do not see why that great corporation, with its enormous traffic in this article, should alone be exempted from the supervision and regulation of the Government. I care very little about the natural-gas feature in the amendment, but I do want to bring the Standard Oil Company somewhere within the reach [fol. 927] of the law, and, owing to the method in which most oil is bought and handled, *if you put in the words*

"for the public" after "transportation" you practically kill the amendment. (40 Cong. Rec. 7000.)

For further debate relevant to the application of the amendment to private pipe lines see 40 Cong. Rec. 7002, 7005, 7008, 7009.

Its meaning being clear, the question of its constitutionality arose, and was defended by Senator Nelson (40 Cong. Rec. 7001), and again by Representative Rhinock (40 Cong. Rec. 9337). That Congress clearly appreciated the existence of the constitutional question is further indicated by the following excerpts:

> Mr. Long. *This bill makes all pipe lines common carriers, without any exception.*
>
> Mr. Mallory. *Yes; this bill says that,* but this bill can not make a common carrier out of a line that is not a common carrier.
>
> Mr. Long. *That will be for the courts to determine* (p. 9254).
>
> Mr. Foraker. A majority of the Senate insisted that this provision should apply, as the Senator from Massachusetts contended it should, to all pipe lines, *without regard to whether they were carrying for the public or not,* his contention being that such a qualification would destroy the effect of what he was trying to accomplish (p. 9255).
>
> Mr. Long. But *the intention of this amendment,* as the Senator will admit, *is to take in all pipe lines. There are no exceptions,* and it will take a decision of [fol. 928] the courts to determine whether the Senator and myself are right in that proposition (p. 9256).

Some one suggested that the amendment had been adopted in confusion without any sufficient comprehension, but Senator Gallinger answered as follows:

> It will be noted on page 6504 that on the amendment proposed by the Senator from Massachusetts as amended there was a roll call and there were seventy-five Senators who responded to their names. So it is perfectly apparent that the Senate perfectly understood what it was doing with reference to this matter. (40 Cong. Rec. 7001.)

The act as amended went twice to conference. The first committee altered the position of the amendment, putting it in the same section with the commodities clause, which at that time covered all common carriers. In this position it would not only have applied to all pipe lines, but would have had the further effect of divorcing the ownership of pipe lines and the ownership of oil. This, however, was disagreed to. The second report restored the amendment to its original position and in the commodities clause substituted for the words "common carrier" the word "railroad." This was accepted, but not without strenuous opposition from certain Senators. Senator Tillman, a member of the first conference committee, summarizes the situation as follows:

> * * * it simply means in plain English that the Standard Oil Company has got in its work * * *. [fol. 929] We release the Standard Oil people entirely from the control of the provision which divorces the producers of commodities from the transportation of commodities——(40 Cong. Rec. 9101).

As all this discussion was directed at the Standard Oil Company, and as both the report of the Commissioner of Corporations and the debates in the Senate had already made clear that the Standard Oil Company, as to the main part of these lines at least, had never held itself out as a common carrier, there can be no doubt that Congress meant the act to apply irrespective of the pipe lines' previous history. Senator Lodge said:

> I think under this clause as it now stands, these trunk lines, which are practically 90 per cent in the control of the Standard Oil, may be compelled to take the oil of other producers. (40 Cong. Rec. 9104.)

The original discussion as to the exact application of Senator Lodge's amendment was renewed in connection with this conference report, but only served as an opportunity for Senators Culberson, Bailey, and Lodge to reiterate the meaning for which the Government contends. (40 Cong. Rec. 9103, 9104, 9644-9647.)

II. The language of the amendment is appropriate to express the intention of Congress manifested by the debates.

(1) The petitioners contended below, that whatever Congress may have intended when the amendment was enacted, nevertheless, the language itself is susceptible of a [fol. 930] construction that would confine it solely to those companies (comparatively few) which were common carriers prior to 1906. In support of this position, the primary and normal meaning of the words "engaged in the transportation of oil" was argued to be, "engaged in *the business of* transporting oil *for the public for hire.*" The short answer is, that the petitioners are urging the court not to construe the statute, but to rewrite it, and to insert words never there,—the very words, in fact, deliberately rejected by Congress when Senator Foraker tried to amend the carefully chosen language of Senator Lodge. Obviously such a position is untenable, and so the Commerce Court decided. (No. 481; R. 100.)

(2) It was further urged that the concluding clause of the amendment, "* * * *who shall be considered and held to be common carriers within the meaning and purpose of this act*" is merely descriptive, not mandatory, and confines the operation of the preceding language to those lines which may be held to have been common carriers all along. Clearly such an argument substitutes a strained and artificial meaning for the normal and primary meaning of the words. Clearly the clause is mandatory; it is the very formula most frequently used in statutes where it is desired to include something which would not ordinarily be connoted by the words themselves. It is immaterial, says Congress, whether these pipe lines are common carriers in fact; they shall in any case be *considered* common [fol. 931] carriers for "*the purpose of this act.*" The instances where these or similar words have been used to express a mandatory intention are innumerable. The following are a few:

Act to Regulate Commerce, sec. 6:

> Whenever the word "carrier" occurs in this act *it shall be held* to mean "common carrier."

Cardinel v. *Smith*, 5 Fed. Cas., No. 2395:

> When an act (14 Stat. 144) declares that dealers in canned goods, under certain circumstances, "*shall be*

deemed the manufacturers thereof," it is equivalent to declaring that such dealers shall be treated and held liable as if they were manufacturers, notwithstanding they are not such in fact. (Syllabus.)

Revised Statutes, sec. 2172:

The children of persons who have been duly naturalized * * * *shall*, if dwelling with their parents, *be considered* as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, *shall* though born out of the limits of jurisdiction of the United States, *be considered* as citizens thereof; * * *

36 Stat. 96, sec. 7:

* * * and if the appraised value of any merchandise shall exceed the value declared in the entry by more than seventy-five per centum * * * such entry *shall be held* to be presumptively fraudulent * * *.

[fol. 932] *36 Stat. 89, sec. 23:*

* * * but this privilege *shall not be held* to apply to implements, machinery, or apparatus to be used in the construction of any bonded warehouse * * *.

36 Stat. 103, sec. 25:

* * * and evidence of such giving, or offering, or promising to give, satisfactory to the court in which such trial is had, *shall be regarded* as prima-facie evidence * * *.

Revised Statutes, sec. 2174:

* * * and every seaman, being a foreigner, *shall* after his declaration of intention to become a citizen of the United States * * * *be deemed* a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, * * *.

The Pure Food Law, 34 Stat. 768:

SEC. 7. That for *the purposes of this act* an article *shall be deemed to be* adulterated * * * in the case of foods * * * when * * *, etc.,

giving many instances where the condition termed adulterated could not possibly be regarded as such within any ordinary use of the word.

> SEC. 12. * * * The word "person" as used in this act *shall be construed to import* both the plural and the singular, as the case demands, and *shall include* corporations, companies, societies, and associations. When construing and enforcing the provi- [fol. 933] sions of this act, the act * * * *shall in every case be also deemed to be* the act, etc. * * *.

Revised Statutes, sec. 1:

> * * * a requirement of an "oath" *shall be deemed* complied with by making affirmation in judicial form.

Revised Statutes, sec. 5:

> The word "company" or "association" when used in reference to a corporation, *shall be deemed* to embrace the words "successors and assigns of such company or association," in like manner as if these words, or words of similar import, were expressed.

Colorado R. S., 1908, sec. 2439:

> Any such corporation or corporations * * * *shall be deemed a common carrier* * * *.

Oklahoma constitution, Art. IX, sec. 34:

> As used in this article the term "transportation company" shall include * * *; the term "rate" *shall be construed to mean* * * * etc.

Missouri R. S., 1899, sec. 4160:

> * * * seventeenth, * * * the place where any person having no family shall generally lodge, *shall be deemed* the place of his residence.

See also Revised Statutes, secs. 2162, 1770, 1771, 1772, 1782, 1787, 1788, 1789.

Many of these examples, it is true, use the words "shall be deemed to be" or "shall be construed to be," but clearly [fol. 934] there is no essential difference between such ex-

pressions and the words "shall be considered and held to be." To the normal user of English the latter is as appropriate to express the meaning which the legislature intended to convey as are the former. It would be a most artificial construction which should attempt to distinguish between them.

(3) In conclusion, attention is asked to the fact that while the act in terms refers to "common carriers by railroad" (sec. 1), Congress studiously and significantly avoided the use of any such phrase, as "common carriers by pipe line" or "common carrier pipe lines."

III. The Rule of Construction followed in the "Commodities Case," 213 U. S. 366, Is Not Applicable Here

The following excerpts from the opinion of the Court below follow and accurately set forth the Government's position on this point (No. 481; R. 101-104):

> These considerations are sought to be fortified by invoking the familiar principle that where a statute permits of two constructions, one of which involves serious questions of constitutional power and right, while the other would be free from constitutional objection, the latter should be adopted. Numerous cases illustrating and enforcing this principle are brought to our attention, of which one of the latest is the well [fol. 935] known "Commodities Case," *United States* v. *Delaware & Hudson Company*, 213 U. S. 366. Upon these authorities the contention is earnestly pressed that the amendment should be held to apply to only such pipeline companies as are or may be adjudged to be common carriers, because the broader construction upon which the Government insists, and which would, in in effect extend the amendment without limitation or qualification to all persons and corporations engaged in the interstate transportation of oil by means of pipe lines, including those who use this means solely for transporting their own oil over their privately acquired rights of way, necessarily gives rise to "grave and doubtful constitutional questions," 213 U. S., supra, and perhaps to "a succession of constitutional doubts," as was suggested in the *Harriman case*, 211 U. S. 422.

That the argument thus summarized is not without force may be conceded. *The objection to its acceptance does not arise from any doubt concerning the rule of interpretation invoked, for that rule is well settled, but rather from the lack of any substantial basis for its application. It is only when a statute is ambiguous or obscure, or wanting in definiteness, so that its real intent and meaning are uncertain because the language permits differing interpretations, that the rule in question may be applied.* If the legislation is clearly expressed and of unmistakable import, so that there is no room for reasonable doubt as to what the lawmaking body intended to accomplish, the courts [fol. 936] are not at liberty to frustrate or modify the legislative intention, but must accept and deal with the statute in accordance with the manifest purpose which it expresses.

To our apprehension the meaning of this amendment is not open to serious question. It is a clear and comprehensive declaration, in no respect indefinite or incomplete. The concluding phrase is not a limitation or restriction, but on the contrary was plainly inserted for the purpose of fixing the legal status of the persons and corporations included in precise terms in the preceding description, to the end that they should be regarded and treated as common carriers subject to the act by all officials who are or may be charged with the administration and enforcement of the regulating statute. In our judgment the amendment permits of no other or different construction, and we must therefore accept it as a plain and unambiguous measure, designed to effect a complete and definite purpose.

In support of this view we need cite only the first *"Employers' Liability cases,"* 207 U. S. 463, 500. It seems evident to us that the statute then under consideration was not clearer or plainer than is the amendment in question, nor were its terms any more comprehensive and unqualified. To uphold the constitutionality of that enactment the Government stoutly contended that it should not be construed as applying to all the employees of any common carrier engaged in interstate commerce, although all were in- [fol. 937] cluded in the language defining its scope, but should be held to embrace only such employees as

were, or when they were, themselves engaged in interstate commerce; and this view is reflected in the dissenting opinion of Mr. Justice Moody. But a majority of the court, speaking through Mr. Justice (now Chief Justice) White, rejected the argument in an opinion from which the following is quoted:

"So far as the face of the statute is concerned, the argument is this: That because the statute says carriers engaged in commerce between the States, etc., therefore the act should be interpreted as being exclusively applicable to the interstate commerce business and none other of such carriers, and that the words 'any employee,' as found in the statute, should be held to mean any employee when such employee is engaged only in interstate commerce; but this would require us to write into the statute words of limitation and restriction not found in it. * * * To write into the act the qualifying words, therefore, would be but adding to its provisions in order to save it in one aspect, and thereby to destroy it in another; * * *

"The principles of construction invoked are undoubted, but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional; but this does not imply, if the text of an act is unambigous, that it may be rewritten to accomplish that purpose."

[fol. 938] SECOND POINT

The Constitutionality of the Act

The act construed as applying to all interstate oil-carrying pipe lines and making it a condition upon their operation that they shall act as common carriers does not violate the Fifth Amendment to the Constitution.

Upon this inquiry the court below defined its province in the language of *Minnesota* v. *Barber*, 136 U. S. 313, 320, as follows:

* * * Upon the authority of those cases, and others that could be cited, it is our duty to inquire, in respect to the statute before us, not only whether there is a real or substantial relation between its avowed objects and the means devised for attaining

those objects, but whether by its necessary or natural operation it impairs or destroys rights secured by the Constitution of the United States.

And referred also to *C. B. & Q. Ry.* v. *Drainage Commrs.*, 200 U. S. 561, 593, in which it was said:

> * * * If the means employed have no real, substantial relation to public objects which government may legally accomplish; if they are arbitrary and unreasonable, beyond the necessities of the case, the judiciary will disregard mere forms and interfere for the protection of rights injuriously affected by such illegal action. The authority of the courts to interfere in such cases is beyond all doubt. * * * If the injury complained of is only incidental to the legitimate [fol. 939] exercise of governmental powers for the public good, then there is no taking of property for the public use, and a right to compensation, on account of such injury, does not attach under the Constitution.

We submit to the test adopted by the court below and with reference to the act under discussion maintain that:

(1) The object of the act is one for which the Federal authority may properly be exercised.

(2) The means employed have in fact a real and substantial relation to the object sought, and are reasonable in themselves, and not arbitrary or beyond the necessities of the case.

(3) The act is therefore valid, for it does not violate any express prohibition of the Constitution.

Or, to paraphrase the classic statement of the Chief Justice in *McCulloch* v. *Maryland*, 4 Wheat. 421, the end is legitimate and within the scope of the Constitution, the means are appropriate, are plainly adapted to that end, are not prohibited, and consist with the letter and spirit of the Constitution.

I. The object of the Pipe Line Amendment, namely, to regulate interstate commerce in oil by protecting well owners and independent refiners from duress by pipeline owners, rendering possible real competition, and preventing monopoly of the interstate commerce in oil,

is one for which the authority of Congress may properly be exercised.

The purpose of the act was the prevention of monopoly. This has been fully shown in the preceding point.
[fol. 940] It is clear that Congress recognized the economic advantage possessed by the pipe-line owner whereby he was able to oppress unreasonably the small well owner and refiner, and to draw into his own hands at his own terms the entire crude output in the region tributary to his line and the consequent control of the industry. The *Report of the Commissioner of Corporations* declared this to be one of the "chief sources" of the power of the Standard Oil Company (59th Cong., 1st Sess., House Doc. 812, p. 37), a "natural advantage due to its enormous capital" (p. 62).

Clearly, whatever we may think of the *means* chosen, the *purpose* was legitimately within the field of legislative power. The Government may always intervene to prevent an economic advantage from being made the instrument of oppression. There is no inalienable right to do injustice.

Competition is the basis of our economic policy. But not war to the knife and the knife to the hilt. The whole history of remedial legislation is the history of checks invented by society to prevent the stronger, richer, or more crafty from wringing from their fellow men advantages unreasonably disproportionate to their own superiority.

The prevention of monopoly by the prohibition of business methods which tend to produce it is only one example of this principle. (*Standard Oil Co.* v. *United States*, 221 U. S. 1; *Waters-Pierce Oil Co.* v. *Texas*, 212 U. S. 86, 109; and see the very strong recent case upholding stat-
[fol. 941] utes against local price cutting, *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157.) The regulation of public service companies is another. (*Wyman, Public Service Corporations*, Chap. III.)

But the principle has an infinitely wider application. As was well said by Mr. Justice Holmes in *Continental Wall Paper Co.* v. *Voight & Sons Co.*, 212 U. S. 227, 271:

> Courts and legislation sometimes have recognized that the so-called freedom to contract or not may be

made illusory by the economic situation of one of the parties.

Thus manufacturers may be compelled to pay weekly wages because any other system tends to give the employer, by reason of his economic position, an unfair advantage over his employees. (*Opinion of the Justices*, 163 Mass. 589.)

Laws compelling the payment of wages in cash, instead of company store orders (*Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13), and laws forbidding the payment of seamen's wages in advance (*Patterson* v. *Bark Eudora*, 190 U. S. 169), stand upon the same basis, and so do Employer's Liability Acts (*Second Employer's Liability Cases*, 223 U. S. 1), and loan-shark laws (*Mutual Loan Co.* v. *Martell*, 222 U. S. 225).

Doubtless there were those who complained that property rights and freedom of contract were unduly restricted when men were first forbidden to sell themselves as debtor slaves, yet only recently laws carrying the same idea two [fol. 942] steps beyond, and forbidding women, and even men, to hire themselves to excessive daily labor have been sustained by this court. *Muller* v. *Oregon*, 208 U. S. 412; *Holden* v. *Hardy*, 169 U. S. 366.

The statute now under consideration simply presents once more the ancient conflict between the unrestrained and injurious use of property and justice.

II. The means employed, the prohibition of pipe lines except upon condition that they act as common carriers, has a real and substantial relation to the object sought, the prevention of monopoly, and is not arbitrary or beyond the necessities of the case.

The Pipe Line Amendment in substance prohibits purely private pipe lines and declares that henceforward oil shall be transported through pipe lines in interstate commerce by common carriers alone.

A majority of the court below, admitting the Government's argument as to the construction and purpose of the act, nevertheless were of opinion that there is no reasonable relation between the private operation of pipe lines and the upbuilding of monopoly. In other words, in the last analysis, the decision below turns upon a question of fact,

namely, whether Congress was wholly unreasonable in believing that the owners of pipe lines have such an advantage over the well owners and purchasers of crude oil as warrants governmental intervention.

[fol. 943] The following excerpts from the opinion, which we designate "premise" and "conclusion," demonstrate the error of the court:

Premise:

> True, the possession of a pipe line enables its owner to transport his oil to the refinery or other market at very small cost compared with any other means of conveyance. *The practical result may be, and in most instances doubtless would be, that other producers find it to their interest to sell the output of their wells to the owner of the pipe line,* and in this sense it may be said that *they are obliged to sell to him. Granted that his pipe line gives him such command that he is able to control or even fix the selling price of the crude article in that particular field or territory,* upon what sustainable theory can it be claimed that other producers are deprived of anything which rightfully belongs to them because they do not or can not provide themselves with the same means of reaching the market? * * * (No. 481; R. 125.)

* * * * * * *

Conclusion:

> In our judgment there is no basis for the contention that the pipe-line amendment has any real or substantial relation to the monopoly. (No. 481; R. 127.)

Thus the court below seems to have disregarded the established rule that the presumption favors the conclusion of Congress on such questions of fact. Chief Justice Marshall said in *McCulloch* v. *Maryland*, 4 Wheat. 315, 423:

> [fol. 944] But where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the government, to undertake here to inquire into *the degree of its necessity*, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground.

And this principle has been applied in such cases as *Powell* v. *Pennsylvania*, 127 U. S. 678-685, *Austin* v. *Tennessee*, 179 U. S. 343-348-9, and *Jacobson* v. *Massachusetts*, 197 U. S. 11-31, which illustrate the reluctance with which the court should oppose its personal views to the deliberate judgment of the legislative branch and a strong preponderating public opinion.

In *Powell* v. *Pennsylvania* the court quotes with approval the language of Chief Justice Waite in the *Sinking Fund Cases*, 99 U. S. 700, to the effect that "every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government can not encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule."

Continuing the court says (p. 685):

> It is not a part of their (the courts) functions to conduct investigations of fact entering into questions of public policy merely, and to sustain or frustrate the legislative will, embodied in statutes, as they may happen to approve or disapprove its determination of such [fol. 945] questions. The power which the legislature has to promote the general welfare is very great, and the discretion which that department of the government has, in the employment of means to that end, is very large.

And in *Austin* v. *Tennessee*, *supra*, a State statute prohibiting the sale of cigarettes was upheld, the court saying:

> Cigarettes do not seem, until recently, to have attracted the attention of the public as more injurious than other forms of tobacco, *nor are we now prepared to take judicial notice of any special injury resulting from their use* or to indorse the opinion of the Supreme Court of Tennessee that "they are inherently bad and bad only." At the same time we should be shutting our eyes to what is constantly passing before them were we to affect an ignorance of the fact that a *belief in their deleterious effects*, particularly upon young people, *has become very general*, and that communications are constantly finding their way into the public press denouncing their use as fraught with great dan-

ger in the youth of both sexes. *Without undertaking to affirm or deny their evil effects, we think it within the province of the legislature to say how far they may be sold or to prohibit their sale entirely* (348, 349).

But aside from the presumption in favor of the law, it is clear, the court below to the contrary notwithstanding, that Congress was fully justified in concluding—

[fol. 946] (1) That the private operation of pipe lines carrying oil in interstate commerce tends to monopoly.

(2) That an appropriate means of reaching the evil was to prohibit their operation save as common carriers.

Of these in order:

(1) The private operation of pipe lines carrying oil in interstate commerce tends to monopoly

This court itself has independently reached the same conclusion as did Congress. The findings of the court below as to the relation between the pipe lines and the monopoly is directly opposed to the findings of this court in *Standard Oil Company* v. *United States*, 221 U. S. 1. The petition in that case charged, *inter alia:*

> * * * restraint and monopolization by control of pipe lines * * * (221 U. S. 42.)

The decree of the Circuit Court sustained this charge and stripped the Standard of most of the very pipe lines here in question. Nor can we forbear to note that the same distinguished counsel who now represent that corporation, then, as now, protested in the following terms:

> The ownership of the pipe lines has not been a means of monopolizing. Substantially all of the pipe lines owned by the Standard Oil companies have been constructed by those companies. There has never been any exclusion of anyone from the oil fields either in the production of oil, or its purchase, or its storage, or its gathering or transportation by pipe lines. Ownership of the pipe lines does not give the Standard [fol. 947] companies any advantages in dealing with the producers which are not open to others.
>
> The decree erroneously includes and operates upon several of the appellant companies. (221 U. S. 12.)

Nevertheless this court, while not in terms referring to that contention, in effect completely overruled it by supporting the portion of the decree complained of (221 U. S. 80-81); in other words, it held these pipe lines to be what their counsel claimed them not to be—"*the means of monopolizing*" the oil industry.

The decision of the *Standard Oil Case* necessarily involved the affirmation of the principles upon which this suit must be decided.

Furthermore, there have been two most thorough investigations of this question, made by direction of Congress; first, the investigation in 1905-6 by the Commissioner of Corporations, whose report was the occasion for the passage of the law in question; second, the investigation in 1906-7 by the Interstate Commerce Commission.

The Report of the Commisioner of Corporations, entitled "Report on the Transportation of Petroleum" (59th Cong., 1st Session, House Doc. 812) contains the following statements:

> The Standard Oil Company, by reason of its vast resources, its efficient organization, and its extensive facilities, has, apart from traffic discriminations, advantages in transportation which are now commonly spoken of as natural. * * * Chief among the advantages which, aside from present railroad discrimi-[fol. 948] nations, the Standard possesses are the immense pipe-line systems of the company, which enable it at low cost to collect crude oil at highly favorable locations for refining. * * * The advantages of a pipe line over a railroad in the transportation of oil can hardly be overstated (p. 29).
>
> This estimated cost of transportation by pipe line is only about one-fourth the cost of rail transportation. * * * The advantage which the Standard Oil Company possesses, by reason of its practice of transporting crude oil from the field to distant refineries by means of pipe lines, may be considered in part a *natural advantage due to its enormous capital* * * * (p. 62).
>
> The Standard Oil Company has all but a monopoly on the pipe lines in the United States. Its control of them is one of the chief sources of its power (p. 37).

The Report made by the Interstate Commerce Commission (59th Cong., 2d Session, House Doc. 606), from "thou-

sands of pages of testimony," taken at public hearings, where witnesses testified under oath, Standard Oil counsel were present, and the right to cross-examine and to tender counter testimony was fully accorded (p. 2), is even more emphatic. It says:

> At the basis of the monopoly of the Standard Oil Company in the production and distribution of petroleum products rests the pipe line. • • •
>
> The advantages which the possession of these pipe lines gives to the Standard are apparent upon the [fol. 949] surface. The refineries of the independent producer who, as a rule, has no pipe line of any considerable extent, and who generally depends upon that of the Standard for his supply of crude material, are located for the most part near the source of the crude supply. Upon the other hand the Standard locates its refineries near the great centers of distribution. • • •
>
> The possession of these pipe lines enables the Standard to absolutely control the price of crude petroleum and to determine, therefore, the price which its competitors in a given locality shall pay. • • • (p. 5).
>
> In any industry whoever controls the avenues of transportation of either the raw material or the finished product can speedily drive all competitors out of existence. The production and distribution of petroleum is no exception to this rule. While there may be a feeble competition in limited areas, even that must rest largely upon the sufferance of the Standard Oil Company so long as it has practically the exclusive use of its present system of pipe lines (p. 6).

Conclusions

> We were required by the resolution under which this investigation has proceeded to suggest remedies for ascertained wrongs.
>
> *More than anything else the pipe line has contributed to the monopoly of the Standard Oil Company, and the supremacy of that company must continue until its rivals enjoy the same facilities of transportation by this means.* • • • (p. 14).

[fol. 950] Other public authorities have reached similar conclusions. The Secretary of the Interior by a regula-

tion promulgated pursuant to 33 Stat. 65, effective December 21, 1906, refused to grant pipe line rights of way through public lands in Oklahoma and Indian Territory except upon condition that the grantees accept and deliver shipments of oil at any regular station on their line. Similarly the legislatures of Kansas (*Laws 1905*, Ch. 315, Sections 1, 2) and West Virginia (*Code W. Va. 1906*, Sections 2229, 2829, 2830), and perhaps others have prohibited pipe lines altogether except upon that basis.

The reasons are obvious. It is an accepted economic principle that certain industries, particularly those carried on by means of expensive transportation facilities, possess an inevitable tendency to monopoly, and are in fact one kind of *natural* monopoly. The pipe liens stand upon the same basis as water companies, gas companies, electric lighting systems, railroads, telephones, and all the other "industries of increasing returns."

They differ from the others chiefly in this, that in the case of other industries, the danger to the public lies in their power to extort an unfair price for the commodity they *sell*, as water, gas, electricity, transportation, storage, etc. But if the public is harmed by any one corporation becoming the exclusive *seller*, so it may be harmed by any one corporation becoming the exclusive *buyer;* especially when the commodity bought is an article of public need [fol. 951] and of which the exclusive buyer at once becomes the exclusive seller also. Men are harmed in exactly the same way by being forced to sell their oil too cheap as by being forced to buy their oil too dear. One form of extortion is as unjust and as harmful to the public as the other, and the pipe-line owner has a constant opportunity for both.

It is idle to suggest that the individual well owners or refiners ought to build pipe lines of their own. Every farmer might equally as well construct a railroad and every cottage have its private gas plant. The initial cost is too great and quantity of oil too small. The *Report of the Commissioner of Corporations* turns the light of history on this suggestion and disposes of it in the following language (59th Cong., 1st Sess., House Doc. 812, p. 30):

> Nor has the failure of independent shippers to construct pipe lines of their own been due wholly to lack of enterprise on their part. It is obvious that the

> construction of a vast pipe line system requires an amount of capital far beyond the resources of the average independent refiner. This method of transportation for long distances is in fact economical only where the volume of traffic is great. The methods of competition practiced by the Standard Oil Company have prevented its competitors from building up a business sufficient to justify such outlay. An attempt was made in the case of one important independent pipe line enterprise—that of the United States Pipe Line Company—to avoid this difficulty by cooperation, but it was only after nine years of large expenditure [fol. 952] and constant struggle against opposition of both the Standard Oil Company and the railroads that this company finally completed its lines to tidewater, and this line is a very small one compared with those of the Standard. An earlier enterprise, that of the Tidewater Oil Company, which laid the first pipe line to the seaboard, was so bitterly attacked by the same interests that it speedily surrendered to the Standard Oil Company.

The same practical necessities which this report points out as the origin of the monopolistic character of pipe lines were held to be the origin of the monopolistic character of railroads by this court itself in *Texas and Pacific Railway Company* v. *Interstate Commerce Commission*, 162 U. S. 197, 210:

> Before we consider the phraseology of the statute, it may be well to advert to the causes which induced its enactment. They chiefly grew out of the use of railroads as the principal modern instrumentality of commerce. While shippers of merchandise are under no legal necessity to use railroads, they are so practically. The demand for speedy and prompt movement virtually forbids the employment of slow and old-fashioned methods of transportation, at least in the case of the more valuable articles of traffic. At the same time, the immense outlay of money required to build and maintain railroads, and the necessity of resorting, in securing the rights of way, to the power of eminent domain, in effect disable individual merchants and shippers from themselves providing such means

[fol. 953] of carriage. From the very nature of the case, therefore, railroads are *monopolies*, and the evils that usually accompany monopolies soon began to show themselves, and were the cause of loud complaints. * * *

In practical result, and that is the thing courts and legislatures are concerned with, the small well owner is in a position very closely resembling that of the mine owner in *Strickley* v. *Highland Boy Gold Mining Co.*, 200 U. S. 527, who had no right of way out of his mines; or the owner of the arid land in *Clark* v. *Nash*, 198 U. S. 361, who had no means of bringing water in, and was allowed to use his neighbor's irrigation ditch. The shipment of oil except by pipe line is a practical impossibility. No other means of transportation can possibly compete with it. Without a pipe line the oil producer is, as it were, shut in by an impassable barrier.

But even these analogies do not adequately express the difficulties of the small producer. The possibilities of duress are even greater in the case of oil wells than in the case of mines and arid lands. The mine owner can shut up his mine and hold it, but the wells once opened can not be closed to await a more convenient season. And if they could be, or if they were not opened in the first place, the owner of the oil land would only lose instead of gain by waiting, because oil lies in great subterranean reservoirs, and the pumping of the wells upon adjacent lands would drain the common source. *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190. Therefore the small producer is compelled either to sell his oil, or to sell the wells themselves, to [fol. 954] the owner of the pipe line at whatever terms the latter may choose to offer.

He is caught beneath the sheer weight of capital, and has no alternative except to yield.

The court below says that there is no connection between monopoly and a situation where "the greater number of oil producers are virtually compelled to sell their output to the owners of private pipe lines" (No. 481, R. 127); but Mr. Justice Holmes said, in *Swift* v. *U. S.*, 196 U. S. 375, 402:

> No more powerful instrument of monopoly could be used than an advantage in the cost of transportation.

It is largely the use of this potent instrument that has built up these enormous capitalizations; that has paid these enormous dividends; that once at least has thrown the oil industry of the whole United States into the hands of a single group of capitalists. The evidence in the *Standard Oil Case* proves it; the statistics in the Government reports prove it; the facts were in the mind of Congress when it passed this legislation. Congress has declared the possibility of its recurrence a menace to the public welfare. Congress has struck down monopoly full grown. It now seeks to destroy the source from which it sprang.

But the court below says that Congress is quite mistaken; that pipe lines have no relation to monopoly; that the right to injure the public in general and one's neighbors in particular is merely one of the legitimate and inviolable advantages arising from the acquisition of substantial amounts of property.

[fol. 955] (2) An Appropriate Means of Reaching the evil Was to Prohibit the Operation of Interstate Pipe Lines Save as Common Carriers

Having, then, reached the conclusion that the private operation of pipe lines tended to the public injury, was not the course which Congress took appropriate and reasonable to prevent that injury? What else could Congress have done? Any attempt to regulate the amount of oil the pipe-line owner should draw from a given field suggests at once impossible complications, even if such a step were constitutional, and not conflicting with State authority.

Strict regulation of such pipe lines as were already common carriers would have afforded only partial relief. Most of the important lines were not common carriers. Those that were ostensibly common carriers usually had their legal termini in the woods at the crossing of a state line (Fawn Grove, Center Bridge, or Unionville, for example; No. 482, R. 4-5), where their delivery stations were purely fictitious. The real termini where oil would normally be received or delivered, were owned by separate, non-common-carrier corporations.

Disintegration of the Standard Oil Company (ultimately approved by this court as a reasonable means to the similar end sought in the *Standard Oil Case*, but not yet attempted

when this act was passed), would not have freed the producer of the raw material. Each separate pipe line would still have held a monopolistic power within its own tribu-[fol. 956] tary area. Moreover, this would merely have destroyed one particular monopoly, leaving still available the means by which others might be created.

Government ownership either by the construction of new pipe lines (involving sheer economic waste of duplicating plants), or by the condemnation of existing lines would have been a step so radical, with possibilities of such far-reaching evils, that Congress was well justified in refusing to take it so long as any other possible alternative existed.

The course actually selected does not take the pipe line out of the possession of its owner. It does not compel him against his will to engage in the business of carrying oil as a common carrier. He may discontinue the use of his pipe line entirely if he chooses. He may continue to operate it, accepting and carrying for reasonable compensation and under reasonable regulations and conditions whatever oil others may offer him together with his own. Or he may sell the pipe line to some one else who will so operate it. His position in no whit differs from that of the various banking companies discussed in *Noble State Bank* v. *Haskell*, 219 U. S. 575-580, as to which the court said:

> In this case there is no out and out unconditional taking at all. *The payment can be avoided by going out of the banking business and is required only as a condition for keeping on from corporations created by the State.* We have given what we deem sufficient reasons for holding that such a condition may be imposed.

[fol. 957] *Nor does the act require anything even remotely resembling the impossible.*

The operation of pipe lines as common carriers is beyond question commercially practicable, and has been universally recognized.

Turning for light upon this question to sources such as were examined by this court in *Shollenberger* v. *Pennsylvania*, 171 U. S. 1, 7-8-9, and *Muller* v. *Oregon*, 208 U. S. 412, 419, we find the following:

(*a*) *Prior Federal legislation.*

An act of Congress (33 Stat., 65) authorizes the Secretary of the Interior to grant pipe lines rights of way through Oklahoma and Indian Territory under such conditions as he shall prescribe. Pursuant to this act the Secretary promulgated, effective Dec. 21, 1906, a set of regulations for the granting of such rights of way which provided that—

> • • • no application for the construction of a pipe line will be approved unless the applicant agrees that such pipe line shall be held to be a common carrier and agrees to all the provisions hereof. • • •. The approval of any application for oil-pipe lines and other privileges is on the condition that the permittees thereof shall accept and deliver shipments of oil at any regular station on their line.

(*b*) *Prior Federal decisions.*

Although under the authority of the *Shollenberger case, supra,* (where the court considered evidence given in the case of *People* v. *Marx,* 99 N. Y. 377, 381) this court might perhaps look into the record of the evidence in the case [fol. 958] of *Standard Oil Co.* v. *U. S.,* 221 U. S. 1, it is doubly certain of that right in view of the fact that by stipulation of counsel that evidence was made a part of the record before the Commission. A summary of such portions of the Standard Oil evidence as relates to pipe lines may be found, accompanied with citations to the original record, in the Government brief in that case (U. S. records and briefs, 1910) at pages 140, 154, 169-177 of Vol. I, and pages 22, 67-150 of Vol. II. We call the attention of the court particularly to pages 106-120 of Vol. II, where there is extended discussion of evidence based upon elaborate experiments, proving that it is commercially practicable for pipe lines to act as common carriers.

(*c*) *State legislation.*

The following States (including practically all in which any considerable production of crude oil exists) have granted to pipe lines the power of eminent domain and have otherwise recognized the fact that they may act, and do commercially act, as common carriers. Kansas and

West Virginia, at least, have prohibited them on any other basis. The Kansas statutes are particularly interesting, since they contain full provisions for treating oil as grain and other fungible goods are treated in elevators and warehouses. The date immediately following the name of each State is the year in which its statutes on the subject were enacted:

Arkansas (1905); §§ 2991*a*-2991*b*, Supp. Kirby's Dig. Ark. Stat., 1911.

[fol. 959] *California* (1891); Code C. P., s. 1238, par. 10.

Colorado (1891); R. S. Colo., 1908, ss. 2461, 2439.

Illinois (1913); "An act to provide for the regulation of public utilities."

Indiana (1891); Burns. Annot. Ind. Stat., 1908, s. 5148 et seq.

Kansas (1905); Laws, 1905, ch. 315, ss. 1, 2. Dassler's Gen. Stat. Kan. ch. 48, Art. IV.

Kentucky (1900); Ky. Stat., 1909, s. 3766 *b*.

Louisiana (1906); Acts of State of La., 1906, No. 39, p. 54; also Act No. 36 (*id.* 52).

Nebraska (1903), ss. 4575, 4581, Comp. Stats., 1911.

New York (1890); Birdseye's C. & G. Consol. N. Y. Laws, vol. 5, s. 50, p. 6311-6316.

Ohio (1868); Page & Adams Annot. Oh. Gen. Code, ss. 10128, 10129, 10132.

Oklahoma (1908); Const., art. 9, ss. 2, 4, 18, 31, 34; s. 786 (1890); ss. 4309, 4313 (1909) Rev. Stats.

Pennsylvania (1872, 1883, 1907); P. & L. Dig., 1910, vol. 1, p. 1903; *Id.* vol. 3, p. 6399.

Texas (1899); Supp. to Sayles Tex. Civ. Stats., 1897-1906, p. 104, ch. 15a. §§ 1-6.

West Virginia (1879); Code of W. Va., 1906, ss. 2229, 2829, 2830 to 2851, inclusive.

Wyoming (1891); Const., art. 10, § 7; Wyo. Comp. St., s. 4202[1]

[1] For convenient reference we print the several statutes referred to as an Appendix to this brief.

[fol. 960] (*d*) *State decisions.*

The following cases, either directly or obiter, hold that pipe lines are, or may become, common carriers:

W. Va. Transp. Co. v. *Volcanic Oil & Coal Co.*, 5 W. Va. 382.
W. Va. Transp. Co. v. *Ohio River Pipe Line Co.*, 22 W. Va. 600.
Gas Co. v. *Lowe and Butler*, 52 W. Va. 662, 664, 665.
Griffin v. *S. W. Pa. Pipe Line*, 172 Pa. St. 580.
Columbia Conduit Co. v. *Commonwealth*, 90 Pa. St. 307.
Nat. Transit Co. v. *Weston*, 121 Pa. St. 485, 494.
Boyle v. *Smithman*, 146 Pa. St. 255.

(*e*) *Public records and reports.*

40 Cong. Rec., part 7, pages 6361-6373, and the other citations given under Point I of this brief, to the debates accompanying the passage of this act, show that the practicability of pipe lines as common carriers was perfectly familiar to those cognizant with the oil industry.

The Report of the Commissioner of Corporations, 59th Congress, 1st session, House Doc., vol. 100, No. 812, pages 29, 36, 44, 49, 60-62, 86. This is the report upon which the present act was based. It shows the practical monopoly of the pipe lines by the Standard Oil Company, the enormous advantages arising from their control, and the utter impossibility of bona fide rail competition.

Report of the Commissioner of Corporations on the Petroleum Industry (May 20, 1907), Part I, pp. 26-38; 152 *et seq;* [fol. 961] 196-206, which discusses the entire subject with even more fullness than the earlier report.

The tariffs of other pipe-line companies filed with the Interstate Commerce Commission show that numerous companies, including the Texas Company, the largest competitor of the Standard Oil Company, and numerous subsidiaries of the Standard Oil itself, are acting as common carriers, and many of them have so acted for years. A partial list of those which have filed tariffs is as follows:

National Transit Co.
N. Y. Transit Co.
Producers & Refiner's Oil Co. (Ltd.)
Buckeye Pipe Line Co.

Columbia Pipe Line Co.
Crescent Pipe Line Co.
Cumberland Pipe Line Co.
Emery Pipe Line.
Eureka Pipe Line Co.
Gulf Pipe Line Co.
Indiana Pipe Line Co.
S. W. Pennsylvania Pipe Lines.
Southern Pipe Line Co.
The Texas Co.
United States Pipe Line Co.

(f) Current sources of public information, encyclopedias, textbooks, etc.

Encyclopedia Britannica, 9th ed., vol. 18, p. 718, sub. tit. Petroleum, contains a description of the practice of treating oil like grain in elevators wherever pipe lines are common carriers.

New International Encyclopedia, Vol. XIII, p. 1020, gives the different grades of oils, which, measured by [fol. 962] specific gravity, range from 30° to 46° on the Baumé scale, in which water has a specific gravity of 10.

Wyman, Public Service Companies, s. 416, states that pipe lines should be made common carriers and compelled to handle oil as grain elevators handle grain.

(*g*) And finally, even admitting the allegations of fact contained in the pleadings in the present cases they do not make out (as to establish their case they must make out) the commercial impossibility of the common carriage of oil.

For instance, The Prairie Oil & Gas Company, No. 506, alleges only that oils of the *highest and the lowest* grades can not be transported through pipes *of the kind now owned* by them, without much intermixture as would leave the common stock *more valuable* than the poorer and *less valuable* than the best grades of oil. Clearly such allegations make out no case of impossibility. There are *many* grades of oil, and the petitioner might properly impose reasonable limits as to the grades it would receive, as a railroad is not compelled to carry whole steel bridges or other articles unfit to be carried on railroads. Such regulations are found in the tariffs of those companies who do act as common carriers. (See certified copies of regulations of the Texas Co. and of the National Transit Co., No. 481; R. 155-159.)

Furthermore, petitioners have not alleged that they could not, by reasonable readjustments of their facilities (as, for instance, cutting out "loops," or devoting one pipe to one [fol. 963] sort of oil and another to another), carry even the highest and lowest grades with so little mixture that it would be commercially negligible.

And finally, although they allege that the resulting mixture would be *more* valuable than the poorer and *less* valuable than the best, they do not, and they could not, allege that it would be so much more or so much less valuable that a scheme of differentials *could* not be devised, whereby the shipper might pay or receive a proper allowance, according to the character of his oil, and accept either his own slightly contaminated oil, or a like quantity of general intermixture, at destination; nor do they allege that carriage of the intermediate grades would not be commercially practicable.

The Uncle Sam Oil Co., No. 507, alleges that it—

> has no means whereby it could receive, store, transport, and deliver to another *the same oil* that should be tendered for transportation; that *under these conditions* it is physically impossible for your petitioner to assume the duties and responsibilities of a common carrier to receive, store, transport, and deliver to the consignee or owner the *same* oil which may be tendered for shipment. (R. 4.)

These allegations require no further comment, for we have already shown above that delivery of the identical molecules is not essential to the common carriage of oil.

[fol. 964] *No. 508, Robert D. Benson et al.* v. *U. S.*, contains no allegations as to the physical impossibility of pipe lines serving as common carriers.

No. 481, The Ohio Oil Co. v. *U. S.*, contains only the allegation that compliance with the order would cause—

> great loss to petitioner because the transportation through its pipes of oils of varying grades and gravities would produce a large amount of contamination, with a resulting substantial depreciation in the quality and value of the oil belonging to your petitioner. (R. 5.)

Admitting, for argument, that injurious contamination would result from *any* mixture, a rate, or a scheme of

differentials, that would repay petitioner for the injury to his oil would be a reasonable regulation, and petitioner does not, and could not, deny its commercial practicability.

No. 482, Standard Oil Co. v. U. S.

Allegations as to impossibility identical with those in No. 481, *supra* (see R. 8), except that the words "grades and gravities" are qualified by the expression "*widely* different." It would seem, therefore, that in addition to the contamination charge which we suggested in No. 481, the Standard Oil Co. might further protect itself by regulations which would exclude *too* "*widely* different grades and gravities" altogether, or set apart special lines for special grades of oil.

[fol. 965] *No. 483, Standard Oil Co. of Louisiana v. U. S.*

Allegations identical with those of the Standard Oil Co., No. 481, *supra*. (R. [illegible])

The various reasons which the appellees assign for asserting that the act requires impossibilities are quite of a piece with the carefully timed transfer by the New York Transit Company and the National Transit Company of the discharging ends of their lines to the Standard Oil Company of New Jersey. If impossibilities and inconveniences exist they are in large part due to the appellees themselves and to the efforts they are making to escape the operation of the law.

III. Nothing in the Constitution prohibits the adoption by Congress of this means, so found to be in fact reasonable and appropriate to the accomplishment of its purpose.

The Constitution provides (Article I, Section 8) that:

> The Congress shall have power • • • To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

This act is, in fact, as we have shown, "necessary and proper for carrying into execution" the power to regulate interstate commerce, and therefore, under the clear rule established ever since *McCullough* v. *Maryland*, 4 Wheat. 315, *supra*, it must be held valid unless it violates some

[fol. 966] prohibition elsewhere explicitly made in the Constitution.

Two explicit prohibitions, both in the Fifth Amendment were urged by the petitioners below:

(1) The due process clause.

(2) The clause against taking private property for public use, without just compensation.

We regard it as thoroughly established by the decisions of this court that neither of these clauses is violated by such a statute as this.

(1) The Act is not in violation of the due process clause

The due process clause does not prevent Congress from regulating commerce by prohibiting a kind of commerce harmful to the public. *Hoke* v. *U. S.*, 227 U. S. 308; *The Lottery Case*, 188 U. S. 358. Nor does it limit the power to regulate commerce to the protection of health, morals, and order. It may be exerted for purely economic purposes whenever the strong, preponderant public opinion believes that there is a great public need. *Noble State Bank* v. *Haskell*, 219 U. S. 104; *C. B. & Q. R. Co.* v. *Drainage Commissioners*, 200 U. S. 561, 592, and the Anti-trust and other cases, *supra*.

(a) *In many instances regulations of interstate commerce have been upheld which take the form of prohibition except upon such terms as would protect the public welfare.*

These have been held constitutional even though compliance with the condition has incidentally resulted in great [fol. 967] expenditure of money, or the uncompensated restriction of what had theretofore been a legitimate use of property.

The *Commodities Case, U. S.* v. *Del. & Hudson Co.*, 213 U. S. 366, is directly in point. It was there held that Congress could prohibit common carriers from carrying their own coal, despite the fact that many of the companies affected had invested enormous sums of money in the business of mining prior to the passage of the law. There is no substantial distinction between that case and the present. In both the motive of Congress was the same—to prevent an unconscionable use of an advantage in the means of transportation. In the one case the owner of a

railroad is forbidden to carry his own coal—unless he first parts with ownership; in the other the owner of a pipe line is forbidden to carry his own oil—unless he transports also the oil of others for reasonable compensation. The same reasoning which supported the one supports the other also.

In *Atlantic Coast Line* v. *Riverside Mills*, 219 U. S. 186, Mr. Justice Lurton, upholding the constitutionality of the Carmack Amendment, said:

> The power of government extends to the denial of liberty of contract to the extent of forbidding or regulating every contract which is reasonably calculated to injuriously affect the public interests (p. 202). • • • The requirements that carriers who undertook to engage in interstate transportation, and as a part of that business held themselves out as receiv- [fol. 968] ing packages destined to places beyond their own terminal, *should be required as a condition of continuing in that traffic* to obligate themselves to carry to the point of destination, using the lines of connecting carriers as their own agencies, was not beyond the scope of the power of regulation (p. 203).

And in *Norfolk & Western Ry. Co.* v. *Dixie Tobacco Co.*, 228 U. S. 593, the same law was held properly applicable to a case where the initial carriers had never held themselves out as "receiving packages destined to places beyond their own terminal," *i. e.*, as a condition of engaging in interstate commerce they were forced to become insurers of the goods long after their own connection with them had entirely ceased.

A third case closely in point is *Southern Ry.* v. *Reid*, 222 U. S. 424, 438, where this court upheld the provisions in the act to regulate commerce which forbid any railroad subject to the act to engage in interstate commerce *unless* its rates have first been filed with the Commission. This again was to prevent one set of shippers from obtaining unconscionable advantages over others. Discriminations were not illegal at the common law. A shipper's only right was the right to reasonable rates. Discriminations were forbidden under the act to regulate commerce because it is for the public interest that all shippers shall have equal opportunities, and this although many valuable contract rights

were thereby destroyed, as in the *Mottley* case, 219 U. S. 467, and the *Armour* case, 209 U. S. 56.

[fol. 969] (*b*) *It is immaterial that the condition is not expressed, but implied.*

In the case of *Noble State Bank* v. *Haskell, supra,* the act which this court interpreted as going "from regulation to prohibition except upon such conditions as it may prescribe" (219 U. S. 113), was *not in terms* conditional. The same is true of the Carmack Amendment, 34 Stat. 584, 595, which in the *Atlantic Coast Line* case, was held to require interstate carriers:

> * * * *as a condition of continuing in that traffic* to obligate themselves to carry to the point of destination, using the lines of connecting carriers as their own agencies. (219 U. S. at 203.)

(*c*) *Nor is this sort of regulation confined to industries "affected with a public interest" in the technical sense.*

The court below attempted to distinguish the pipe lines from cases affecting common carriers on the ground that their owners had not "devoted their property to a use in which the public has an interest." (No. 481; R. 110.) Such a distinction regards form and ignores substance. The public has an interest in *any business which substantially affects the interests of the public,* and any individual acts of any nature whatsoever may be regulated within constitutional limits to the extent that they affect the public.

As well might the Standard Oil Co. have urged that it was not subject to the antitrust law because it had not [fol. 970] devoted its property to public use in the public service sense.

Of course the power to regulate commerce is not limited in its operation to public service corporations.

In *Noble State Bank* v. *Haskell,* 219 U. S. 104, and *Engel* v. *O'Malley,* 219 U. S. 128, it was held that a State may regulate the business of banking, and that regulations may go to the extent of *prohibition except under conditions* that will safeguard "the primary conditions of successful commerce," or prevent the unscrupulous exploitation of a defenseless class of poor immigrants. In the language of Mr. Justice Holmes in the *Haskell case, supra:*

> It may be said in a general way that the police power extends to all the great public needs. (*Camfield* v.

U. S., 167 U. S., 518.) It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that *both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce* * * * (p. 111).

It is not answered by citing authorities for the existence of the right (to engage in banking) at the common law. There are many things that a man might do at common law that the States may forbid. He might embezzle until a statute cut down his liberty. We can not say that the public interests to which we [fol. 971] have adverted, and others, are not sufficient to warrant the State in taking the whole business of banking under its control.

On the contrary we are of opinion that it may go on from regulation to prohibition except upon such conditions as it may prescribe (p. 113).

True, these bank cases arose under State laws, but the power of the Federal Government over interstate commerce, as limited by the Fifth Amendment, is practically the same, for the purpose of this case at least, as the power of a State over intrastate commerce as limited by the Fourteenth. Furthermore, the case against the pipe lines is stronger than that against the banks, because the banking business has no inevitable tendency to monopoly.

In *Mugler* v. *Kansas*, 123 U. S. 623, 669, it was held that a state may prohibit the manufacture of intoxicating liquors, although incidentally great amounts of mill property whose chief value consists in its fitness for such purposes is thereby practically destroyed. It may prohibit such manufacture *even for the maker's own use*, if it regards that as essential to the successful enforcement of the chief purpose of the act.

The power which the States have of prohibiting such use by the individuals of their property as will be prejudicial to the health, the morals, or the safety of the public is not—and consistently with the existence and safety of organized society can not be—burdened with the condition that the State must compen-

sate such individual owners for pecuniary losses they [fol. 972] may sustain by reason of their not being permitted, by a noxious use of their property, to inflict injury upon the community.

It is true, that, when the defendants in these cases purchased or erected their breweries the laws of the State did not forbid the manufacture of intoxicating liquors. But the State did not thereby give any assurance or come under an obligation that its legislation upon that subject would remain unchanged.

In *Ohio Oil Company* v. *Indiana*, 177 U. S. 190, it was held that a state might constitutionally prohibit anyone from permitting gas or oil to escape from his well into the open air for more than two days after it was struck. The court, basing its decision on the peculiar nature of the substances in question, said, speaking through the present Chief Justice:

> They have no fixed *situs* under a particular portion of the earth's surface within the area where they obtain. They have the power, as it were, of *self-transmission*. No one owner of the surface of the earth, within the area beneath which the gas and oil move, can exercise his right to extract from the common reservoir, in which the supply is held, without, to an extent, diminishing the source of supply as to which all other owners of the surface must exercise their rights. The waste by one owner, caused by a reckless enjoyment of his right of striking the reservoir, at once, therefore operates upon the other surface owners. * * * (p. 202-203.)
>
> Hence it is that the legislative power, from the peculiar nature of the right and the objects upon which [fol. 973] it is to be exerted, *can be manifested for the purpose of protecting all the collective owners, by securing a just distribution*, * * * (p. 210).

A still stronger case is *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, which followed *Ohio Oil Co.* v. *Indiana*, *supra*, and held that a state statute forbidding the pumping of mineral water at Saratoga Springs for the purpose of extracting gas alone, was constitutional because, the proportion of gas being small, it furnished an

incentive for pumping an excessive amount of the water in derogation of the rights of other co-proprietors upon adjacent lands.

Suppose some great corporation, desiring to exploit its oil lands in the shortest possible time, should at great expense install pumping machinery so powerful that it could rapidly draw away the entire common reservoir. Such a thing was held to be unlawful in the case of percolating waters even at common law. (*Forbell* v. *City of New York*, 164 N. Y. 522, 526; see also, *Kansas* v. *Colorado*, 206 U. S. 46.) Clearly a statute could forbid the pumps to be used (*Manufacturers Gas etc. Co.* v. *Indiana Natural Gas Co.*, 155 Ind. 461; *Oklahoma* v. *Kansas Natural Gas Co.*, 221 U. S. 229, 262) and if their use could be prohibited why could it not also be prohibited except upon condition that the owner should give to the adjacent proprietors an equitable proportion of their common property.

This comes very close to our problem. True, a pipe line is not a pump, but its effect is practically the same. What [fol. 974] is the difference between being able to raise oil infinitely faster than anyone else, and being able to transport it infinitely cheaper than anyone else? The man who is not rich enough to own a pipe line must either stand by and see his share in the joint property entirely appropriated by his more fortunate neighbor, or he must *sell* his share under conditions where freedom of contract is wholly out of the question. The Pipe Line Amendment, like the Indiana Statute, *supra*, is "for the purpose of protecting all the collective owners by securing a just distribution." It liberates the industry by freeing the producer of the raw material from that unjust duress which inevitably *restrains* interstate commerce, and, as the Government maintains, *tends always toward monopoly.*

(d) Nor is the law violative of the due process clause in that, being general in its terms, it might cover any pipe lines which are not public markets for oil.

All of the Standard Lines, which were 90 per cent of the whole mileage, bought the greater part of their oil from other well owners in the same field. So did most, if not all, the other pipe lines. In regard to the companies

involved in this case the court below made the following findings:

Standard Oil Company:

> The record indicates that much the greater part of the oil, and perhaps all of it, is oil which this company has purchased. (No. 481; R. 97.)

[fol. 975] *Standard Oil Company of Louisiana:*

> It purchases a considerable part of the crude oil which its lines transport. (No. 481; R. 97.)

The Ohio Oil Company:

> It is an extensive purchaser of crude oil from other producers. (No. 481; R. 97.)

Robert D. Benson et al.:

> The greater part of the crude oil transported by this company is purchased from other producers. (No. 481; R. 96.)

The Prairie Oil & Gas Company:

> * * * its own wells yield only about 12,000 barrels per day and it purchases approximately 70,000 barrels per day on the average. (No. 481; R. 95.)

The Uncle Sam Oil Company:

> The extent to which this company purchases oil from other producers, if it engages in that business at all, does not appear from the record. (No. 481; R. 96.)

There is no showing in this case that there existed at the time this amendment was passed, a single pipe line not engaged in buying oil from tributary small producers. Suppose, however, that one of these pipe lines should refuse to purchase this tributary output. The only practical recourse left to the small producers would be to sell to the pipe line companies the wells themselves or else stand helplessly by and watch the draining of the common pool. The pipe line owner may choose whichever course [fol. 976] he pleases, *buying oil or buying wells*, and in either case the small producer is equally at his mercy.

It is no wonder that Senator Lodge was able to say in the course of the long series of debates following his introduction of this measure:

> The small well owner, to whom there have been pathetic references this morning, has not yet made his objections known to me. I heard within 24 hours after the introduction of my first amendment, on May 28, from the Standard Oil Co. A representative of that company came to see me on the following day, and represented the uselessness and injustice of this amendment. I have had a great many letters from small oil owners, and I have had a great many letters from independent refiners in support of the amendment, and the objections suggested by the Senator from Maine and the Senator from West Virginia really do not touch the case. * * * (40 Cong. Rec. 6365.)

But even supposing, for the sake of argument, that somewhere some one could be found who possessed a pipe line through which he pumped only the output of his own well, all of which he used on his own premises for fuel or other purposes—the discovery of such an individual would not invalidate this law. Lawmaking bodies are forced to legislate in a broad way, to provide rules which will be reasonably workable, and they are permitted to consider the normal case, without providing for the exceptional instance. It is enough that purely private pipe lines are *generally* the means of unfair and oppres- [fol. 977] sive advantage tending toward monopoly. Whether the whole business must be stamped out or regulated in order to give the public adequate protection, is a matter of legislative discretion, as the following cases amply demonstrate.

The point is put beyond argument by the recent case of *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, in which Mr. Justice Hughes, announcing the holding of the court that a state, to render effectual its prohibition of the sale of malt liquors might also include within the prohibition beverages which were in themselves innocuous, said (p. 201):

> * * * It is also well established that, when a state exerting its recognized authority undertakes to sup-

press what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. It does not follow that because a transaction separately considered is innocuous it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the government.

See also:

Booth v. *Illinois*, 184 U. S. 425.
Lemieux v. *Young, Trustee*, 211 U. S. 489.
Powell v. *Pennsylvania*, 127 U. S. 678, 685.
Silz v. *Hesterberg*, 211 U. S. 31.
Commonwealth v. *Gilbert*, 160 Mass. 157.
Knoxville Iron Co. v. *Harbison*, 183 U. S. 13.
The Slaughter House Cases, 16 Wall. 36.

[fol. 978] *The Pure Food Law*, 34 Stat. 768-770, prohibits the sale for food of any animal which "died otherwise than by slaughter," though the steer which was killed by a train, or accidentally shot, would be perfectly wholesome. Many other sections of the same law similarly include prohibitions which might cover harmless, inoffensive, and nonfraudulent food products.

It is unnecessary to go further. These instances from the great multitude of others show conclusively that where certain acts are *ordinarily* attended with public danger the legislative power is not prevented from prohibiting such acts altogether if in its judgment that is the most feasible way of eradicating the evil.

(2) Nor does the Act violate the prohibition against taking property for public use without compensation.

Congress has done two distinct things here: (*a*) it has prohibited the private operation of oil pipe lines in interstate commerce, and (*b*) it has subjected all pipe lines elected to be operated in interstate commerce to the public use as common carriers.

(*a*) *As to the prohibition of private operation, there is not a taking.*

It is merely the prohibition of a noxious agency of interstate commerce, *i. e.*, the private, monopolistic, operation

of pipe lines. There is no vested right in a noxious use of property. If there had been, the *Standard Oil Trust Case* could not have been decided as it was.

[fol. 979] In *Mugler* v. *Kansas*, 123 U. S. 623, 669, it was held that a State might prohibit the manufacture of intoxicating liquors, although incidentally great amounts of mill property whose chief value consisted in its fitness for such purposes was thereby practically destroyed.

In the *Commodities Case*, 213 U. S. 366, the court dismissed:

> * * * summarily * * * all the elaborate suggestions made in argument as to the alleged wrong to result from the enforcement of the clause * * * because obviously mere suggestions of inconvenience or harm are wholly irrelevant * * * (p. 405).

In the *Noble State Bank* case, *supra*, the Oklahoma Bank Guaranty Law was upheld although as Mr. Justice Holmes said:

> * * * there is no denying that by this law a portion of its property might be taken without return to pay debts of a failing rival in business. (220 U. S. 110.)

See also:

Union Bridge Co. v. *U. S.*, 204 U. S. 364.
The Slaughter House Cases, 16 Wall. 36.
L. & N. R. Co. v. *Mottley*, 219 U. S. 467.
C. B. & Q. R. Co. v. *Drainage Commissioners*, 200 U. S. 561, 592.

(b) But it may be said that in so far as the owners elect to operate the lines under the condition, there is, of course, a "taking" in the subjection to the quasi public use as common carrier. The thing so taken, is however, only the compensated, occasional use of the pipe line.

[fol. 980] There is no change of title—no shift of possession—not even the acquisition of a permanent easement. An adjoining well owner, if he complies with reasonable regulations, may have his oil poured into the pipe and propelled to the other end. For that he must pay a reason-

able rate. When the reasonableness of that rate is called in question the courts will make sure that the pipe line owner is adequately compensated. That question is not open at this time, however.

Two cases very clearly illustrate our meaning. In *Otis Co.* v. *Ludlow Co.*, 201 U. S. 140, the Court upheld the Massachusetts mill act. This gave the builder of a dam the right to flow the lands of upper riparian proprietors. The only provision for compensation was a right to sue the dam owner in tort for the damages actually done. Thus compensation was not even secured in advance, although the flowing of land has been held by all courts to be a "taking." (*Pumpelly* v. *Green Bay Co.*, 13 Wall. 166.)

In *L. & N. R. Co.* v. *Central Stock Yards Co.*, 212 U. S. 132, 150, the court refused to uphold a statute of Kentucky compelling one railroad to surrender its cars to another without security for their return. Mr. Justice McKenna, speaking for the minority of the court, laid down the principles which must govern these cases in language that is none the less valuable because the majority differed in their application of those principles to that particular case. Relying on the *Ludlow* case, *supra*, he said (p. 150) that the [fol. 981] exigencies of the case in hand did not require the court to decide whether the power there exercised was the police power or eminent domain; if the former, no compensation was necessary; if the latter, the right of the carrier to sue for any damage resulting (as in the *Ludlow* case), *together with the right to charge for the use actually taken, was sufficient.* The majority, however, were of opinion that as an exercise of the police power it was unreasonable, and as a taking the provisions for compensation were *not* sufficient.

The dividing line between the two cases is suggested by Mr. Justice Holmes in the *Ludlow* case, where he said—

> As no title is gained to have the water on the upper land, the dam owner *pays only for the harm actually done from time to time. If this is so, somewhat less elaborate provisions might be justified* than could be sustained when the title is lost. So far as security goes, *looking to the reasonable probabilities in such cases*, it would seem to be sufficient (p. 153).

It is apparent, then, that "somewhat less elaborate provisions" for compensation may be justified in some cases than in others—all that is necessary is that "looking to the reasonable probabilities in such cases," they shall be reasonably sufficient. And the transfer of possession is one of the circumstances for consideration.

This being so, the *Pipe Line Cases* fall rather within the rule of the *Mill Acts* than of the *Stock Yards* case. In the [fol. 982] *Stock Yards* case the railroad wholly relinquished the possession of its cars. Here the owner never gives up possession of the pipe lines. There the railroad was compelled to trust to the uncertain solvency of other companies and the pitfalls of litigation to recover his compensation in case of loss. Here his only loss is the use of his pipes by the oil of others. The compensation for that loss is the rate paid. That rate is a reasonable rate, and its payment is doubly secured—first by the immemorial right of the carrier to demand prepayment for his services, and, second, by the lien which he has upon the oil carried whereby he may insure payment before delivery. This makes his position even stronger than that of the upper riparian owner in the *Mill Acts* case, for there he was driven to an action of tort to collect his compensation, whereas the pipe-line owner is absolutely certain of his compensation at all times.

The case is analogous also to *Clark* v. *Nash*, 198 U. S. 361, where the court upheld a statute giving individual owners of arid lands in Utah the right to bring water through their neighbor's irrigation ditches. True, the statute provided for payment in advance for the perpetual easement acquired, but the expense of *maintaining* the ditch (which with the increased flow of water would presumably be greater) was to be paid from time to time as occasion arose, and no security was given for that. (Decree of the Utah Court given at p. 365.) Nor is there any intimation that if no permanent easement in the soil had been [fol. 983] taken the requirements of the case would not have been equally satisfied by payments for the use of the ditch as from time to time it should be actually used. Indeed, the inevitable conclusion from the statement of Mr. Justice Holmes in the *Mill Acts* case quoted, *supra*, is that such a provision for compensation would have been sufficient.

For the reasons thus assigned it is submitted that the decrees of the court below should be reversed, the injunctions dissolved, and the several petitions dismissed.

John W. Davis, Solicitor General.

September 22, 1913.

[fol. 984] APPENDIX

Statutes of Various States With Reference to Pipe Lines

(Ante p. 62)

Arkansas

The Supplement to Kirby's Digest, Statutes of Arkansas, 1911, pp. 253, 254, title "Eminent Domain—Oil and Gas Companies" (acts 1905, act 228; in force May 2, 1905), provides:

Sec. 2991a. Any corporation organized by virtue of the laws of this state, for the purpose of developing and producing mineral oil, or petroleum, or natural gas in this state, and marketing the same, or transporting or conveying the same by means of pipes from the point of production to any other point, either to refine or to market such oil, or to conduct such gas to any point or points to be used for heat or lights, may construct, operate, and maintain a line or lines of pipes for that purpose along and under the public highways and the streets of cities and towns, with the consent of the authorities thereof, or across and under the waters and over any lands of the state, and on the lands of individuals, and along, under, or parallel with the rights of way of railroads, and the turnpikes of this state; provided, that the ordinary use of such highways, turnpikes, and railroad rights of way be not obstructed thereby, or the navigation of any waters impeded, and that just compensation be paid to the owners of such lands, railroad rights of way, or turnpikes, by reason of the occupation of such lands, railroad rights of way, or turnpikes by said pipe-line or lines.

[fol. 985] Sec. 2991b. In the event any such company shall fail upon application to individuals, railroads, or turnpike companies to secure such right of way by consent, contract or agreement, then such corporation shall have the right to

proceed to procure the condemnation of such property, lands, rights, privileges, and easements in the manner now provided by law for taking private property for right of way for railroads as provided by section 2947 to section 2958, inclusive, of Kirby's Digest.

Sec. 2991c. Whenever any such corporation shall desire to construct such pipe-line or lines upon or under the lands of individuals, or right of way of any railroad, or any turnpike, said corporation, by its agents, shall have the right to enter peacefully upon said lands or rights of way and survey, locate and lay out its said pipe-lines thereon, being liable, however, for any damage that may result by reason of such acts, and shall designate on a plat or map to be made and filed with the county clerk of the county, the width of the strip of land needed to be condemned for its purposes, its location, and the depth to which such pipes are to be laid.

Sec. 2991d. Any person or persons who shall injure or molest any such pipe or pipes so used for the transportation of such oil or gas, shall be guilty of a misdemeanor, and on conviction be fined in any sum not to exceed two hundred dollars; but should such injury be done wilfully, and be of such a character as to cause such pipes to be so damaged that such oil or gas shall escape and cause damage either to the company or individuals or other corporations, then such person or persons shall be guilty of a felony, and on conviction thereof shall be fined not to exceed one thousand dollars and confined in the penitentiary not more than five years.

[fol. 986] California

Pomeroy's Codes of Civil Procedure of the State of California, 1901, Title VII (act of 1891), "Eminent Domain," 692, provide:

1237. *"Eminent domain" defined.*

Sec. 1237. Eminent domain is the right of the people or government to take private property for public use. This right may be exercised in the manner provided in this title.

1238. *Eminent domain may be exercised, on behalf of what uses.*

Sec. 1238. Subject to the provisions of this title, the right of eminent domain may be exercised in behalf of the following public uses:

1. * * * * *

2. * * * * *

3. * * * * *

4. Wharves, docks, piers, chutes, booms, ferries, bridges, toll-roads, by-roads, plank and turnpike roads; paths and roads either on the surface, elevated or depressed, for the use of bicycles, tricycles, motorcycles and other horseless vehicles, steam, electric and horse railroads, canals, ditches, dams, pondings, flumes, aqueducts and pipes, for irrigation, public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable.

5. * * * * *

6. * * * * *

7. Telegraph lines.

8. * * * * *

9. * * * * *

10. Oil Pipe Lines.

11. * * * * *

12. * * * * *

13. * * * * *

[fol. 987] Colorado

Revised Statutes of Colorado, 1908, Chapter XLV (act of 1891), title "Eminent Domain," 689, provide:

2436. *Pipe line companies—Rights of way.*—Sec. 22. Any foreign or domestic corporation organized or chartered for the purpose, among other things, of conducting or maintaining a pipe line for the transmission of power, water, air, or gas for hire to any mine or mining claim, or manufacturing, milling, mining, or public purpose, shall have the right of way for the construction, operation and maintenance of such pipe line or pipe lines, for such purposes, through any lands, without the consent of the owner thereof,

where such right of way is necessary for the purpose for which said pipe line shall be used. (L. '07, p. 283, Sec. 2)

* * * * * * *

2439. *Common Carriers—Fees.*—Sec. 25. Any such corporation or corporations, organized or chartered for any or all of the purposes hereinbefore mentioned shall be deemed a common carrier or common carriers and shall fix and charge only a reasonable and uniform rate to all persons who desire the use of any such tunnel, pipe line, electric power transmission line or aerial railway. (L. '07, p. 284, Sec. 6)

* * * * * * *

2441. *Compensation for rights of way.*—Sec. 27. Any such corporation shall make due and just compensation for such right of way to the owners of the property through which it is proposed to construct, operate and maintain such tunnel, pipe line, electric transmission line, or aerial tramway, and when the parties cannot agree upon such right of way and the amount of compensation to be paid the owner of such property, the same shall be determined in manner as [fol. 988] now provided by law for the exercise of the right of eminent domain. (L. '07, p. 284, Sec. 7)

* * * * * * *

2461. *Companies that may condemn rights of way.*—Sec. 47. If any corporation formed for the purpose of constructing a road, ditch, reservoir, pipe line, bridge, ferry, tunnel, telegraph line or railroad line, shall be unable to agree with the owner, for the purchase of any real estate or right of way or easement or other right necessary or required for the purpose of any such corporation, for transacting its business, or for the right of way or any lawful purpose connected with the operations of the company, such corporation may acquire title to such real estate or right of way, or easement or other right, in the manner provided by law for the condemnation of real estate or right of way, and any ditch, reservoir, or pipe line company may in the same manner condemn and acquire the right to take and use any water not previously appropriated. (L. '91, p. 98, Sec. 3, amending G. S., Sec. 338; G. L. Sec. 304.)

[fol. 989] Illinois

The Legislature of Illinois in 1913 passed an act entitled "An Act to Provide for the Regulation of Public Utilities," to take effect and be in force on and after January 1st, 1914, which provides *inter alia:*

Sec. 10. *Definitions.*—Unless otherwise specified, the word "commission," when used in this Act, means the State Public Utilities Commission of Illinois, which is created and established under the provisions of this Act.

The term "commissioner," when used in this Act means one of the members of the commission.

The term "public utility," when used in this Act, means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever (except, however, such public utilities as are or may hereafter be owned or operated by any municipality) that now or hereafter:

(a) May own, control, operate or manage, within the State, directly or indirectly for public use, any plant, equipment or property used or to be used for or in connection with the transportation of persons or property or the transmission of telegraph or telephone messages between points within this State; or for the production, storage, transmission, sale, delivery or furnishing of heat, cold, light, power, electricity or water; *or for the conveyance of oil or gas by pipe line;* or for the storage or warehousing of goods; or for the conduct of the business of a wharfinger; * * *

* * * * * * *

[fol. 990] Sec. 50. *Additions and New Structures—Joint Construction.*—Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs,

improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order: * * * :

Sec. 59. *Eminent Domain.*—When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under sections 50 or 58 or Subdivision two (2) of section 81 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain.

[fol. 991] Indiana

Burns' Annotated Indiana Statutes, Revision of 1908, Vol. 2, Chapter 40 (act of 1891), title "Corporations—Manufacturing and Mining Companies," 583, provide:

5148. (5112) *Pipe line companies—Organization.*—1. Whenever three or more persons desire to form a company to lay on, over or underneath the ground, iron pipes or tubes, to erect pumps and pump stations and tanks for storing oil, and also to erect telegraph lines along said line or lines of pipe, and to carry on by means thereof the business of transporting and storing petroleum, they shall make, sign and acknowledge before some officer capable to take acknowledgments of deeds, a certificate in writing which shall state the corporate name adopted by the company, the object of its formation, the amount of capital stock, the term of its existence (not, however, to exceed fifty years), the number of directors and their names, who shall manage the affairs of such company for the first year, and the names of the counties in which its operations are to be carried on, and the county where its principal office shall be located, and file the same in the office of the recorder of such county, which shall be placed upon the record, and a duplicate thereof in the office of the secretary of state.

5156 (5120) *Seal—May hold real estate.*—9. Such company shall have a common seal and the same alter or change at pleasure. It shall have power to acquire, by purchase or otherwise, hold and convey such real estate and personal estate as may be necessary and proper for the purpose of erecting and keeping in repair its lines of pipes and telegraph and tanks and buildings requisite for their operation. [fol. 992] Said corporation may continue for a time not exceeding fifty years. Such corporation shall have power

to acquire such real estate and rights of way as may be necessary for the uses and purposes herein contemplated, in the mode provided in the act approved February 20, 1889, authorizing natural gas companies to appropriate and condemn real estate as fully as if all that part of said act following the first paragraph of the first section and excluding the seventh section were incorporated and made a part hereof.

5159 (5122a) *Oil companies acquiring lands.*—1. That all companies, corporations and voluntary associations now organized under the laws of the state of Indiana, or which may hereafter be organized thereunder, for the purpose of laying on, over or underneath the ground, iron pipes or tubes, to erect pumps and pump stations and tanks for storing oil, and for the transportation of oil shall have power to acquire real estate for the use of such companies, corporations and voluntary associations in the mode and manner provided hereafter in this act.

5160 (5122b) *Acquiring easement in lands.*—2. Whenever any such company, corporation or voluntary association is unable to agree with the owner or owners about the purchase of any real estate in any county, desired for the construction of its trenches or the laying of the mains and the connecting of its pipe lines or on which to erect pumps and pump stations and tanks for storing oil, or on which to construct telegraph and telephone lines, it shall have the right to acquire an easement in and upon the same for each and all the purposes above mentioned, and in the manner and by the special proceedings prescribed in this act.

5161 (5122c) *Appropriation of lands*—Proceedings.—3. Such companies, corporations or voluntary associations as are mentioned in section one (1) of this act, shall have the right and are hereby authorized to enter upon any land for the purpose of examining and surveying its line for trenches [fol. 993] and pipe lines, and telegraph and telephone lines, and a location for pumps and pump stations and tanks for storing oil, and may acquire an easement in and upon so much thereof as may be deemed necessary for its said trenches, pipe lines, telegraph and telephone lines, not exceeding one rod width for any single pipe line, and not exceeding one rod width for any single telegraph or telephone line, and for such easement in real estate as is neces-

sary for the location of such pumps and pump stations and tanks for storing oil. * * *

[fol. 994] Kansas

Dassler's General Statutes of Kansas, 1909, chapter 48 (act of 1905), Article IV, title "Transportation of Oil," provide:

An Act Relating to the Transportation of Oil by Means of Pipe Lines

Be it enacted by the Legislature of the State of Kansas:

Sec. 1. All pipe lines laid, built, or maintained for the conveyance of crude oil within the State of Kansas are hereby declared to be common carriers and said conveyance of said oil shall be in the manner and under the restrictions in this act provided.

Sec. 2. It shall be the duty of every person, firm, association, or corporation operating under such pipe line to provide suitable and necessary receptacles for receiving such oil for transportation and for storage at the place of delivery until the same can be reasonably removed by the consignee, and shall be liable therefor from the time the same is delivered for transportation until a reasonable time after the same has been tranported to the place of consignment and ready for delivery to the consignee. It shall be the duty of every such person, firm, association, or corporation to receive and forward such oil as shall be offered for shipment in the order of application therefor, upon the applicant's complying with the rules herein provided for as to the delivery and payment for such transportation. Such common carrier shall issue to the shipper a certificate showing the actual quantity and specific gravity thereof; but no application for such transportation shall be valid beyond or for a greater quantity than the applicant has ready for delivery at the time of making such application.

Sec. 3. It shall be unlawful for any such person, firm, association, or corporation to charge for the transportation [fol. 995] of such crude oil through its line in excess of the following rates for each barrel of forty-two gallons transported: Six miles and less, five cents; over six miles and not more than fifteen miles, six cents; over fifteen miles and not more than forty miles, seven cents; over forty miles

and not more than eighty miles, eight cents; over eighty miles and not more than one hundred miles, ten cents; over one hundred miles and not more than one hundred and fifty miles, fifteen cents; over one hundred and fifty miles and not more than two hundred miles, twenty cents; over two hundred miles and not more than two hundred and fifty miles, twenty-three cents; over two hundred and fifty miles and not more than three hundred miles, twenty-five cents.

Sec. 4. The State board of railroad commissioners shall have the general supervision and control over all such persons, firms, associations, or corporations in the performance of said business, and shall prescribe reasonable rules for the conduct thereof, which rules, when prescribed and delivered in writing to any such person, firm, association, or corporation, shall be printed and posted up in a convenient, accessible, and conspicuous place at each office, station, or place of business where such oil is received or delivered. The State board of railroad commissioners is hereby authorized to prescribe reasonable maximum rates, not exceeding the rates set forth in section 3 hereof, which shall be charged for the transportation of such oil, which rate shall be binding on every such person, firm, or association, or corporation after its publication in the official State paper: *Provided*, The reasonableness of such rates may be tested by proceedings therefor in any court of competent jurisdiction in this State, and such court shall, upon hearing the same, make such order as shall be proper, and such order may be reviewed by the supreme court as other civil proceedings, regardless of sum or value involved: *Provided*, Before beginning such proceedings in court to [fol. 996] test such matters such person, firm, association, or corporation shall execute a bond to the State of Kansas in such reasonable sum as the judge of the court in which such matter is brought shall order, conditioned that the person, firm, association, or corporation making such application will promptly pay to any shipper the difference between the rate received for transporting oil and the rate finally ordered by such court. When such maximum rates shall be fixed by the State board of railroad commissioners, the rates prescribed in section 3 of this act shall cease to be of force, and the rates so fixed by the State board of railroad commissioners shall govern, as in this section provided.

Sec. 5. Any such person, firm, association, or corporation, which shall fail or refuse to accept, transport, and deliver oil when offered up to the full capacity of such pipe line, at rates not to exceed those provided for by this act, or shall fail, neglect, or refuse to obey any rule so established by the State board of railroad commissioners, shall be liable to the person injured by such failure or refusal in the sum of five hundred dollars liquidated damage, together with reasonable attorney's fees, to be fixed by the court, in case suit shall be brought therefor; such liquidated damages and attorney's fees to be recovered in any court of competent jurisdiction; and in case of any corporation so refusing or failing, the charter board is hereby authorized to revoke the charter or permit to do business in this State of such corporation.

Sec. 6. This act shall take effect and be in force from and after its publication in the official State paper.

The said act was approved February 22, 1905.

[fol. 997] Kentucky

Carroll's Kentucky Statutes, 1909, Chapter 93A (act of 1900), title "Oil and Gas—Condemnation of Land For" provide:

Sec. 3766*h*. *Condemnation of land for.*—All corporations or companies organized for the purpose of constructing, maintaining or operating oil or gas well or wells or pipe line or lines for conveying, transporting or delivering oil or gas, or both oil and gas, are hereby vested with the right and power to condemn lands and material in this Commonwealth or the use and occupation of so much thereof as may be necessary for constructing, maintaining and operating such pipe line, or lines, and all necessary machinery, pumping stations, appliances and fixtures, including tanks, telephone and telegraph lines, for use in connection therewith, together with rights of ingress and egress to examine, alter, repair, maintain and operate or remove such pipe line or lines, all such being hereby declared to be a public use; and when any such corporation or company desires to construct oil or gas pipe line or lines, or both, for the purpose of conducting, transporting or delivering oil or gas, or both, over the lands of others, shall

be unable to contract or agree with the owner or owners of land or material necessary for its use for said purposes, it may, in the mode prescribed for the condemnation of land for railroads, condemn the use of so much of said land as may be necessary for the purpose of constructing, maintaining and operating such pipe line or lines, and all necessary machinery, pumping stations, appliances and fixtures, including necessary tanks, telephone and telegraph lines, and including rights of ingress and egress to examine, alter, repair, maintain and operate or remove the same.

[fol. 998] Louisiana

The acts of the State of Louisiana, 1906, page 54, Act No. 39, approved June 29, 1906, provide:

> An Act Relative to corporations, domestic and foreign, organized with the power to build and construct pipe lines for transportation of oil and gas, or either, giving such corporations, under certain terms, the right of expropriation, rights of way under and across all public lands and across streams and other public waters, and rights of way along, across and under public rural highways and roads, and streets and public places of cities and towns with the consent of and upon terms imposed by the local authorities having jurisdiction thereof, and declaring all corporations exercising the powers, herein contained, to be common carriers.

Section 1. *Be it enacted by the General Assembly of the State of Louisiana:* That corporations, whether domestic or foreign, organized with the power of constructing and operating pipe lines for the transportation of oil or gas, or either, shall have the right to expropriate rights of way for such pipe lines and for telegraph, and telephone lines incident to the operation of such pipe lines and lands for tank and pumping stations, making part of such lines, or of storage stations connected therewith, and necessary to the purpose thereof.

Section 2. *Be it further enacted, etc.*, That said right of expropriation shall be exercised in the same manner, and by the same proceedings, and under the same limitations now imposed by law on railroads and other quasi-public corporations.

Section 3. *Be it further enacted, etc.*, That said corporations shall have a right of way not exceeding ten (10) feet wide for the laying of their pipe lines under and across all public lands of the State.

Section 4. *Be it further enacted, etc.*, That such corporation shall have the right, with their pipe lines to cross all public streams and waters of the State, but in such case [fol. 999] the lines shall be so constructed as not to impede or interfere with the navigation thereof, if such streams and waters are navigable, nor with the drainage through said streams and waters, whether navigable or not.

Section 5. *Be it further enacted, etc.*, That said corporation shall have the right to lay and maintain its pipe lines along, under and across all public rural highways and roads and along, under and across all streets and public places in cities and towns, with the consent of the local authorities having jurisdiction or control thereof, and upon such terms as such authorities may impose.

Section 6. *Be it further enacted, etc.*, That the right conferred by this law upon any such corporation to lay its pipe lines under and across public lands and along and across public highways, streams and waters and streets upon the terms stated, shall also permit said corporation availing itself of such right, to construct and maintain along the route of such pipe lines, telegraph and telephone lines incident to the operation of such pipe lines.

Section 7. *Be it further enacted, etc.*, That no such corporation shall have power to exercise any right of expropriation herein conferred, until it shall have filed with the Secretary of State, a resolution of its Board of Directors, duly certified under its seal, consenting and agreeing that said corporation shall be a common carrier of either gas or oil or both, and that it shall and will transport that product whereof it has declared itself a common carrier, for all persons and corporations up to the capacity of its pipe line, without discrimination or preference.

Act No. 36 (*id.* p. 52), also approved June 29, 1906, declaring pipe lines common carriers, etc., provides:

Section 1. *Be it enacted by the General Assembly of the State of Louisiana*, That all pipe lines, through which

carrier thereof as at common law; and no such common carrier shall allow or be guilty of any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage or delivery of any crude, stock or storage oil, or any product thereof, in its possession or control, or in which it may be interested, directly or indirectly. (L. 1909, p. 427.)

SEC. 4313. *Who may have right of eminent domain.*—All persons, natural, or artificial, except foreign corporations, shall have the right of eminent domain, and any right or privilege hereby conferred, when necessary, to make effective the purposes of this article and the rights thereby conferred. Foreign corporations organized under the laws of any other State or the United States, and doing or proposing to do business in this State, and which shall have become a body corporate pursuant to or in accordance with the laws of this State, and which, as hereby provided, shall have registered its acceptance of the terms hereof, shall receive all the benefits provided by this article. (L. 1909, p. 429.)

[fol. 1012] Pennsylvania

Pepper and Lewis's Digest, 1910, Vol. 1, page 1903 (act of 1872), title "Pipe Line Companies," provides:

458. *Incorporation prior to 1874.*—The provisions of an act relating to corporations for mechanical, manufacturing, mining and quarrying purposes, approved July 18, 1863, and the supplements thereto, be and the same are hereby extended to the transportation and storage of petroleum in the counties of Venango, Warren, Forest, Armstrong, Clarion, Butler, Crawford, and Erie; and that any company organized for such purposes, under the provisions of said act, shall have the right to transport, store, insure and ship petroleum, and for that purpose to lay down, construct and maintain pipes, tubing, tanks, offices and such other machinery, devices or arrangements as may be necessary, and to enter upon, use and occupy such lands as may be requisite for the purposes of the company; and for rights of entry upon lands, rights of way and the use of materials necessary to the construction, maintenance and operation of said lines of pipes and fixtures as aforesaid, they shall be entitled to all the rights and privileges, and

be subject to all the limitations and restrictions of railroad companies, as contained in the act relating to railroad companies, approved February 19, 1849, and the supplements thereto: Provided, however, That nothing herein contained shall be construed to authorize the construction of any railroad.

459. *Incorporation under the act of 1874.*—(Companies may be incorporated for) the carrying on of any mechanical, mining, quarrying or manufacturing business including all of the purposes covered by the provisions of the act of general assembly, entitled "An act to encourage manufacturing operations in this commonwealth," ap- [fol. 1013] proved April 7, 1849, and entitled "An act relating to corporations for mechanical, manufacturing, mining and quarrying purposes," approved July 18, 1863, and the several supplements to each of said acts, including the incorporation of grain elevators, storage warehouse and storage yard companies; and also including the storage and transportation of water, with the right to take rivulets and land, and erect reservoirs for holding water, and excluding the distilling or manufacture of intoxicating liquors; and companies may be organized under this act, having the right to transport, store, insure and ship petroleum, and for that purpose to lay down, construct and maintain pipes, tubing, tanks, offices, and such other machinery, devices or arrangements as may be necessary to fully carry out that right; and also with the right to enter upon, take and occupy such land and other property as may be requisite for the purposes of such corporations:

460. *Power to hold and convey real and personal estate.*—All companies incorporated or hereafter to be incorporated under the provisions of the act to which this is a supplement, for the purpose of the transportation and storage of oil, by means of pipe lines and tanks, for the public, shall have the power to take, hold, purchase and transfer such real and personal property as the purposes of the corporation may require, not exceeding the amount limited by its charter, together with the right to appropriate and take lands, easements and rights of way for locating and constructing steam pumps, tanks, pump houses, and offices, and laying down its pipes or tubes, connections and branches, from any point or points in any of the counties in which petroleum is produced, to any railroad, canal,

navigable river, port or city within this commonwealth, and for all necessary purposes of the corporation, including right to cross railroads, and the right to appropriate a right of way and locate its pipes or tubes, upon and over, under and across any lands, waters, streams, rivulets, roads, turnpike roads, canal or other public highway, not how [fol. 1014] ever, passing through any burying ground or place of public worship, or any warehouse, mill, manufactory, store or dwelling house, without the consent of the owner or owners thereof being first had and obtained: * * *

Pepper and Lewis's Digest, 1910, Vol. 3, page 6399 (act of 1907), title "Railroads and Canals," provides:

344. *Common carrier defined.*—The term "common carrier", as used in this act, shall apply to all corporations, or any person or persons, within the state, engaged in the transportation of freight or passengers by means of railroads or by water, or partly by railroad and partly by water, including electric railway companies, street railway companies, elevated railway companies, underground, elevated, or subway passenger railway companies, bridges and ferries, when used in connection with the transportation of freight or passengers upon any such railroad or railway; pipe-line companies engaged in the transportation of oil, either by means of pipe-lines, or by water, or partly by means of pipe-lines and partly by means of railroads or railways, or partly by means of pipe-lines and partly by means of water; sleeping- and drawing-room car companies engaged in transporting passengers upon any such railroad; express companies engaged in transporting property upon any such railroad, electric railway, street railway, or by water; and telegraph or telephone companies.

345. *Power commission to inquire into methods and facilities of carriers.*—The commission shall have power to administer oaths in all matters in relation to its duties, so far as necessary to enable it to discharge such duties. It shall have full power and authority to inquire into the management of the business of all common carriers, including freight and passenger rates and tariffs, the equitable distribution of cars, the granting of sidings and regulation of crossings, the location of freight and passenger-stations, the adequacy of facilities for the carriage and transporta-

tion of freight and passengers, the use and compensation [fol. 1015] for cars owned or controlled by persons other than the carrier, and, generally, all matters incident to the performance of their public duties, and their compliance with the provisions of their charters and the laws of the land.

346. *Persons discriminated against to make complaints—Commission to communicate with carrier—Decision.*—Any person, firm, corporation, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, complaining of any thing done or omitted to be done by any common carrier subject to the provisions of this act, in violation of law or of any decision, regulation, or recommendation of the commission, may apply to the commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same, in reasonable time, to be specified by the commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant, only for the specific violation of law complained of. If such common carrier shall not satisfy the complaint, within the time specified, and there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of, in such manner and by such means as it shall deem proper. Said commission may institute any inquiry of its own motion, in the same manner and to the same effect as though complaint had been made. No complaint shall, at any time, be dismissed because of the absence of direct damage to the complainant. The commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint as aforesaid, it shall be of the opinion that any of the rates or charges whatsoever, demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act are [fol. 1016] unjust or unreasonable, or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any provision of law, or that any regulation or practice in respect to transportation is unjust, unfair, or unreasonable, and in violation of law, to decide and recommend

what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what regulation or practice in respect to transportation is just, fair, and reasonable to be thereafter followed.

Article I of the "Public Service Company Law" of the State of Pennsylvania, recently passed, provides:

Section 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same* That this act shall be known and may be cited as "The Public Service Company Law."

The term "Public Service Company" when used in this act includes all railroad corporations, canal corporations, street railway corporations, stage line corporations, express corporations, baggage transfer corporations, *pipe line corporations*, ferry corporations, common carriers, Pullman car corporations, dining car corporations, tunnel corporations, turnpike corporations, bridge corporations, wharf corporations, incline plane corporations, grain elevator corporations, telegraph corporations, telephone corporations, natural gas corporations, artificial gas corporations, electric corporations, water corporations, water power corporations, heat corporations, refrigerating corporations, sewage corporations doing business within this State and also all persons engaged for profit in the same kind of business within this Commonwealth, Provided however Such persons and corporations shall not be subject to the provisions of this act with respect to any business transacted or any property owned by them outside of the Commonwealth of Pennsylvania * * *.

[fol. 1017] The term "Facilities" as used in this act includes all plant and equipment of a public service company which includes all tangible real and personal property, buildings, materials, easements, rights of way, rights of trackage subways, tunnels, railroads, street railways, tracks, canals and all animals, locomotives, apparatus, appliances, devices, instruments, appurtenances, freight cars, refrigerator cars, baggage cars, express cars, passenger cars, drawing-room cars, parlor cars, sleeping cars, dining cars, rolling stock, carriages, cabs, hansoms, taxicabs, vehicles, boats, ships, vessels, bridges, barges, cables, conduits, con-

verters, transformers, condensers, wires, poles, structures, telegraph lines, telephone lines, crossbars, engines, machines, dynamos, boilers, motors, storage batteries, switch-boards, water falls, water-power stations, power stations, pumping stations, reservoirs, purifiers, oil tanks, gas tanks, holders, retorts, ducts, pipes, pipe galleries, *pipe lines,* mains, meters, lamps, scrubbers, wharves, piers, docks, ferries, incline planes, side tracks, spurs, turn outs, switches, systems, stations, depots, terminals, terminal facilities, water or gas jet wells, and any and all other means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for by or in connection with the business of any public service company: *Provided, however,* That no property owned by the Commonwealth of Pennsylvania or a municipality thereof at the date when this act becomes effective shall be subject to the Commission or to any of the terms of this act except as elsewhere provided herein.

[fol. 1018] Texas

Herron's Supplement to Sayles' Texas Civil Statutes, 1897-1906, chapter 15a (acts of 1899), page 104, title "Oil, Gas, Salt, etc., Corporations," provides:

Sec. 1. *Not less than three may organize.*—Any number of persons, not less than three, may organize themselves into a corporation for the purpose of storing, transporting, buying and selling of oil and gas, salt, brine and other mineral solutions in this State.

Sec. 2. *Method of organization.*—The manner and method of organizing such corporations shall be the same as provided by law for the organization of private corporations in chapter 2, title 21, of the Revised Civil Statutes of the State, and the provisions of this act shall apply to all corporations already organized for any of the purposes of this act.

Sec. 3. *Powers, etc.*—Such corporations shall have power to store and transport oil and gas, brine and other mineral solutions, and to make reasonable charges therefor; to buy, sell, and furnish oil and gas for light, heat and other purposes; to lay down, construct, maintain and operate pipe lines, tubes, tanks, pump stations, connections, fixtures, storage houses and such machinery, apparatus, devices and

gasses, oil or other liquids are conveyed from one point [fol. 1000] in the State to another point in the States, for a consideration, are hereby declared to be common carriers, and are placed under the control of and subject to regulation by the Railroad Commission of Louisiana.

Section 2. *Be it further enacted, etc.*, That the power and authority is hereby vested in the Railroad Commission of Louisiana, and it is hereby made its duty to adopt, change, or make reasonable and just charges or regulations to govern and regulate all pipe lines in this State, through which gasses or other liquids are conveyed from one point in the State to another point in the State for a consideration.

Section 3. *Be it further enacted, etc.*, That all laws or parts of laws inconsistent or in conflict with this Act be, and the same are hereby repealed.

[fol. 1001] Nebraska

Secs. 4575 and 4581, chapter 64, Compiled Statutes of Nebraska, 1911 (act of July 9, 1903), provide:

That any company, corporation, or association formed or created for the purpose of transporting, transmitting or conveying petroleum or other like oil, and desiring or requiring a right-of-way for the laying and maintaining of any pipe line or lines for such purpose within the State of Nebraska, and being unable to agree with the owner or lessee of any land, lot, or right-of-way on the amount of compensation for the use and occupancy of so much of any lot, land, real estate or right-of-way as may reasonably be necessary for the laying, re-laying and maintenance of any such pipe line, shall have the right to acquire the same for such purpose, as hereinafter provided.

* * * *Provided, however*, that nothing contained in this act shall be construed as granting to any company, corporation or association, any right to obtain a right of way, within the corporate limits of any incorporated city or village.

[fol. 1002] New York

Birdseye's Cumming & Gilbert's Consolidated Laws of New York, 1909, Vol. 5, page 6311, Article VI (Laws of 1890), title "Pipe Line Corporations," provide:

Sec. 40. *Incorporation.*—Twelve or more persons may become a corporation for constructing and operating for

public use, except in the city of New York, lines of pipe for conveying or transporting therein petroleum, gas, liquids or any products or property, or for maintaining and operating any line of pipe already constructed and owned by any corporation, person or persons, except in such city, for the public use, by making, signing, acknowledging and filing a certificate stating the name of the corporation, the number of years it is to continue, the places from and to which it is to be constructed or maintained and operated, its length as near as may be, the name of each county through or into which it is to be constructed; the amount of its capital stock, which shall not be less than fifteen hundred dollars for every mile of pipe constructed or proposed to be constructed, and the number of shares of which it shall consist; the number of directors not less than seven, and the names and places of residence of the directors for the first year, and the place of residence of each subscriber and the number of shares he agrees to take in such corporation, which must in the aggregate equal ten hundred and fifty dollars for every mile of pipe constructed or proposed to be constructed, and twenty-five per centum of which must be paid in cash. Such certificate shall have endorsed thereon or appended thereto and as a part thereof, an affidavit made by at least three of the directors named therein that at least ten hundred and [fol. 1003] fifty dollars of stock for every mile of line proposed to be constructed or maintained and operated has been in good faith subscribed, and twenty-five per centum paid in money thereon, and that it is intended in good faith to construct or to maintain and operate the line of pipe mentioned in such certificate, and that such corporation was not projected or formed with the intent or for the purpose of injuring any person or corporation, nor for the purpose of selling or conveying its franchise to any person or corporation, nor for any fraudulent purpose.

SEC. 42. *Condemnation of real property.*—In case such corporation is unable to agree for the purchase of any real estate required for the purposes of its incorporation, and its line of pipe in the county in which such real estate is situated has been finally located, it shall have the right to acquire title thereto by condemnation, but such cor-

poration shall not locate or construct any line of pipe through or under any building, dooryard, lawn, garden or orchard, except by the consent of the owner thereof in writing duly acknowledged, nor through any cemetery or burial ground, nor within one hundred feet of any building, except where such line is authorized by public officers to be laid across or upon any public highway, or where the same is laid across or upon any turnpike or plank-road. No pipes shall be laid for the purpose of carrying petroleum, gas or other products or property through or under any of the streets in the cities of this state, unless such corporation shall first obtain the consent of a majority of the property owners on the streets which may be selected for the laying of pipes, and such pipe line shall be located with all reasonable care and prudence so as to avoid danger from the bursting of the pipes.

SEC. 49. *Additional powers.*—Every corporation formed under this article shall in addition to the powers conferred by the general and stock corporation laws have power:

[fol. 1004] 1. To cause such examinations and surveys of its proposed line of pipe to be made as may be necessary to the selection of the most advantageous route, and for such purpose by its officers, agents or servants may enter upon the lands or waters of any person, upon, through or across which such corporation can construct its line of pipe, under the provisions of this article, subject however to liability for all actual damage which shall be done thereto.

2. To take and hold such voluntary grants of real estate and other property, as shall be made to it to aid in the construction, maintenance, operation and accommodation of its pipe line.

3. To lay out its pipe line route not exceeding twelve feet in width, but at the terminations of such line and at all receiving and discharging points and at all places where machinery may properly or must necessarily be set up for the operation of such pipe line it may take such additional width, and for such length as may be necessary.

4. To take and convey through pipes any property, substance or product capable of transportation therein by any force, power or mechanical agency, and to erect and

maintain all necessary and convenient buildings, stations, fixtures and machinery for the purposes of its incorporation.

5. To regulate the time and manner in which property shall be transported over its pipe lines, and the compensation to be paid therefor, but such compensation shall not exceed the sum or be above the rate of twenty-five cents per one hundred miles for the transportation of forty-two gallons of any product transported on lines of one hundred miles in length or over, which shall be reckoned and adjusted upon the quantity or number of gallons delivered by such corporation at the point to which it shall have undertaken to deliver the same.

SEC. 50. *Use of line to be public; storage; liable as common carriers; rates and charges.*—The pipe lines of every such corporation shall be open for transportation to the public use, and all persons desiring to transport products [fol. 1005] through such pipe line shall have the absolute right upon equal terms to such transportation in the order of application therefor, on complying with the general requirements of such corporation, as to delivery for and payment of such transportation, but no application for such transportation shall be valid beyond or for a greater quantity of products than the applicant shall then own and have ready for delivery for transportation to such corporation, and every such corporation shall provide suitable and necessary receptacles for receiving all such products for transportation, and for storage at the place of delivery until the same can reasonably be moved by the consignee, and shall be liable as common carriers therefor from the time the same is delivered for transportation until a reasonable time after the same has been transported to the place of consignment and ready for delivery to the consignee, which time shall be fixed by general regulation by the corporation, and shall not be less than two days from and after the same shall be ready for delivery and notice thereof given to such consignee, and all rates and charges of every description, for or on account of or in any manner connected with the transportation of any products, shall be fixed by such corporation by general

rules and regulations, which shall be applicable to all parties who shall transport any products through such pipe line, or deliver or contract to deliver products for transportation and shall be written or printed and exposed to public view and at all times open to public examination.

SEC. 51. *Receipts for property; cancellation of vouchers; delivery of property.*—No receipt, certificate or order of any kind shall be made, accepted or issued by any pipe line corporation for any commodity unless the commodity represented by them is actually in possession of the corporation at the time of making, issuing or acceptance thereof. Whenever any such corporation shall have parted with the possession of any commodity and received therefor any order, voucher , receipt or certificate, such order, [fol. 1006] voucher, receipt or certificate shall not be issued or used again, but shall be cancelled with the word "cancelled" stamped or printed legibly across the face thereof, and such cancelled order, voucher, receipt or certificate shall be filed and preserved by such corporation and a record of the same kept by the secretary thereof. No petroleum or other commodity received for transportation by such corporation shall be delivered to any person without the presentation and surrender of all vouchers, receipts, orders or certificates that have been issued or accepted for the same.

SEC. 52. *Monthly statements.*—Every pipe line corporation shall make monthly a specific statement showing the amount of all commodities received, the amount delivered during the month, and the stock on hand on the last day of each month of the year, and how much of such stock is represented by outstanding certificates, vouchers, receipts or orders, and how much in credit balances on the books of the corporation. Such statement shall be made on or before the tenth day of the succeeding month and verified by the oath of the president and secretary that it is in all respects true and correct, and shall be filed within three days thereafter in the county clerk's office in the county where the principal office of the corporation is located, and a true copy of the same posted in a conspicuous place in its principal office for at least thirty days thereafter.

[fol. 1007] Ohio

Page and Adams Annotated Ohio General Code, Vol. 4, pages 1002, 1003, title "Hydraulic" provides:

SEC. 10128. Any company or companies organized for the purpose of erecting or building dams across rivers or streams in this state to raise and maintain a head of water, or for constructing and maintaining canals, locks, and race-ways to regulate and carry such head of water to any plant or power house where electricity is to be generated, or for erecting and maintaining a line or lines of poles whereon to attach or string wires or cables to carry and transmit electricity, or for transporting natural gas, petroleum, water or electricity, through tubing, pipes or conduits, or by means of wires, cables or conduits or for storing transporting or transmitting water, natural gas or petroleum, or for generating and transmitting electricity, may enter upon any private land for the purpose of examining or surveying a line or lines for its tubing, pipes, conduits, poles and wires, or for a reservoir, dams, canals, race-ways, plant or power house, and for ascertaining the number of acres overflowed by reason of the construction of such dam or dams, and may appropriate so much thereof as is deemed necessary for the laying down or building of such tubing, conduits, pipes, dams, poles, wires, reservoir, plant and power house, as well as the land overflowed, and for the erection of tanks and reservoirs for the storage of water for transportation and the erection of stations along such line or lines, and the erection of such building as may be necessary for the purpose aforesaid. (R. S. Sec. 3878.)

SEC. 10129. Such appropriation shall be made in accordance with the law providing for compensation to the owners [fol. 1008] of private property appropriated to the use of corporations. So far as the rights of the public therein are concerned, the county commissioners as to county and state roads, the township trustees as to township roads, and the councils of municipal corporations as to streets and alleys in their respective jurisdictions, subject to such regulation and restrictions as they prescribe, may grant to such companies, the right to lay such tubing, pipes, conduits, poles and wires therein. But the right to appropriate for any of the purposes above specified, shall not include or extend to the erection of any tank, station,

reservoir, or buildings, or lands therefor, or to more than one continuous pipe, conduit or tubing or land therefor, in or through a municipal corporation, unless the council first consents thereto. (R. S. Sec. 3878.)

SEC. 10132. Such company or companies, for the purpose of transporting natural gas, oils, water, and electricity shall be a common carrier, and subject to all the duties and liabilities of such carriers under the laws of this state. (R. S. Sec. 3878.)

[fol. 1009] Oklahoma

Snyder's Constitution of Oklahoma, 1908, page 226, Article IX, title "Corporations—Definition," provides:

SECTION 1. *Have all powers not possessed by individuals.*—As used in this article, the term "corporation" or "company" shall include all associations and joint stock companies having any power or privileges, not possessed by individuals, and exclude all municipal corporations and public institutions owned or controlled by the State; the term "charter" shall mean the charter of incorporation, by or under which any corporation is formed. The term "license" shall mean the authority under which all foreign corporations are permitted to transact business in this State.

SEC. 2. *Common carriers—right to construct and operate lines.*—Every railroad, *oil pipe*, car, express, telephone or telegraph corporation or association organized or authorized to do a transportation or transmission business under the laws of this State for such purpose, shall, each respectively, have the right to construct and operate its line between any points in this State, and as such to connect at the State line with like lines; and every such company shall have the right with its road or line, to intersect, connect with, or cross any railroad or such line.

SEC. 4. *Oil pipe companies subject to control of commission.*—All oil pipe companies shall be subject to the reasonable control and regulation of the Corporation Commission, and shall receive and transport each other's tonnage or oils, or commodities, under such rules and regulation as shall be prescribed by law, or such commission.

SEC. 18. *Power of commission—may prescribe and enforce rates.*—The Commission shall have the power and

[fol. 1010] authority and be charged with the duty of supervising, regulating, and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor and of correcting abuses and preventing unjust discrimination, and extortion by such companies; and to that end the Commission shall, from time to time, prescribe and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities, and conveniences as may be reasonable and just, which said rates, charges, classifications, rules, regulations, and requirements, the Commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the Commission, within the scope of its authority, shall be unlawful and void.

Sec. 31. *Corporation must incorporate in this State before it has right of eminent domain.*—No railroad, oil pipe line, telephone, telegraph, express or car corporation organized under the laws of any other State, or of the United States, and doing business, or proposing to do business in this State, shall be entitled to the benefit of the right of eminent domain in this State until it shall have become a body corporate pursuant to or in accordance with the laws of this State.

Chap. 11, Article I, section 786, and Chap. 53, Article II, sections 4309 and 4313, Revised Statutes of Oklahoma, provide:

Sec. 786. *Common carrier defined.*—Everyone who offers to the public to carry persons, property or messages is a common carrier of whatever he thus offers to carry. (1890.)

[fol. 1011] Sec. 4309. *Oil carriers are common carriers—Discrimination prohibited.*—Every corporation, joint stock company, partnership or person engaged in the business of carrying or transporting crude oil or petroleum or any of the products thereof for hire or otherwise, by pipe line, within this State, and by virtue of and in conformity to the provisions of this article, shall be deemed a common

arrangements as may be necessary to operate such pipes and pipe lines between different points in this State; to own, hold, use and occupy such lands, rights of way, easements, franchises, buildings, and structures as may be necessary to the purpose of such corporation.

Sec. 4. *Can condemn land; lay pipes, etc., along public roads, streets, etc.*—Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation, and shall have the right to lay its pipes and [fol. 1019] pipe lines across and under any public road or under any railroad, railroad right of way, street railroad, canal or stream in this State, and to lay its pipes and pipe lines across or along and under any street or alley in any incorporated city or town in this State, with the consent and under the direction of the board of aldermen or city council of such city or town. The manner and method of such condemnation shall be the same as is provided by law in the case of railroads; *provided*, that such pipe or pipe lines shall not pass through or under any cemetery, church, or college, schoolhouse, residence, business or storehouse, or through or under any building in this State, except by the consent of the owner or owners thereof; and *provided* further, that all such pipes and pipe lines, when same shall pass through or over the cultivated or improved lands of another, shall be well buried under ground at least twenty inches under the surface, and such surface shall be properly and promptly restored by such corporation unless otherwise consented to by the owner or owners of such land; *provided* further, that if such pipe or pipe line shall be laid over or along any uncultivated or unimproved lands of another, and such lands shall thereafter become cultivated or improved, such pipes or pipe lines shall be buried by said corporation as hereinbefore provided, within a reasonable time after notice by the owner of such lands, or his agent, to said corporation or any agent thereof; and *provided*, further, that whenever such pipe or pipe line shall cross any public road or highway, railroad, street railroad, or street or alley, the said pipes and pipe lines shall be so buried and covered as not to interfere with the use and occupancy of such road, highway, street or alley by the public, or use and occupancy of such railroad, or street railroad by the owner or owners thereof; and *provided* further, that

such pipe line so laid shall not exceed eight inches in diameter.

Sec. 5. *Can borrow money, issue stocks, mortgage, etc.*—Such corporation shall have the right to borrow money to [fol. 1020] issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any of the purposes of such corporation, and shall possess all the rights and powers of corporations for profit in this State wherever the same may be applicable to corporations of this character.

Sec. 6. *Discrimination forbidden.*—It shall be unlawful for any corporation organized under this act to discriminate against any person, corporation, firm, association, or place in the charge for such storage or transportation, or in the service rendered; but shall receive, store or transfer oil or gas for any person, corporation, firm or association, upon equal terms, charges and conditions, with all other persons, corporations, firms, associations for like service.

[fol. 1021] West Virginia

West Virginia Code, 1906, chapter 62C (acts of 1879, C. 27; 1891, C. 44), title "Transportation of Petroleum or other Oils or Liquids" provides:

Sec. 2829. *Persons and companies subject to provisions of act.*—1. Every person, corporation or company now engaged or who shall hereafter engage or continue in the business of transporting or storing petroleum, by means of pipe line or lines or storage by tanks, shall be subject to the provisions of this act and shall conduct such business in conformity herewith; and the word company whenever used in this act shall be construed to include persons and corporations.

Sec. 2830. *Duty to receive for transportation—Connections with tanks or receptacles—Delivery.*—2. Any company heretofore or hereafter organized for the purpose of transporting petroleum or other oils or liquids by means of pipe line or lines, shall be required to accept all petroleum offered to it in merchantable order in quantities of not less than two thousand gallons at the wells where the same is produced, making at its own expense all necessary connections with the tanks or receptacles containing

such petroleum, and to transport and deliver the same at any delivery station, within or without the State, on the route of its line of pipes which may be designated by the owners of the petroleum so offered.

SEC. 2831. *Inspection—Grading and measurement before transportation—Receipts—Deductions for waste.*—3. All petroleum of a gravity of thirty-five degrees Baumé or under, at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipe line or lines, shall, before the same is transported, as provided by section two of this act, be inspected, graded and measured [fol. 1022] at the expense of the pipe line company, and the company accepting the same for transportation shall give to the owner thereof a receipt stating therein the number of barrels or gallons so received, and the grade, gravity and measurement thereof, and within a reasonable time thereafter, upon demand of said owner or his assigns, shall deliver to him at the point of delivery a like quantity and grade or gravity of petroleum in merchantable condition as specified in said receipt; except that the company may deduct for waste one per centum of the amount of petroleum specified in such receipt.

SEC. 2832. *Charge for transportation.*—4. The charge for receiving, transporting and delivering petroleum of the gravity of thirty-five degrees Baumé or under, at a temperature of sixty degrees Fahrenheit, by means of pipe line or lines, shall not exceed one cent per barrel of forty-two gallons per mile; Provided, That if said rate should amount for the whole distance transported to less than ten cents per barrel, then the sum of ten cents per barrel may be charged; and, provided that if the distance be over twenty miles and not more than thirty miles, one-half cent per barrel may be charged for every mile over twenty miles; and provided, further, that if the distance be over thirty miles, the maximum charge shall not exceed twenty-five cents.

SEC. 2833. *Charge for storage.*—5. Any company engaged in storing petroleum of a gravity of thirty-five degrees Baumé or under, at a temperature of sixty degrees Fahrenheit, by means of tanks, shall be permitted to charge for storage one cent per barrel per month or part of a month, unless the same is removed within fifteen days

from the date when said oil is received into the custody of such company, and shall be allowed for evaporation and waste one-half of one per centum of the oil per month unless removed within thirty days from the date of the receipt of such petroleum; but no company engaged in the business of storing petroleum of the gravity of thirty-five degrees Baumé or under, at a temperature of sixty degrees [fol. 1023] Fahrenheit, shall charge for storage any amount in excess of that authorized by this section.

SEC. 2834. *Inspection and measurement before transportation—Receipts—Contents—Deductions for waste—Delivery—Liability for loss.*—6. All petroleum of a gravity exceeding thirty-five degrees Baumé at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipe line or lines, shall be inspected and measured at the expense of the company transporting the same, before the same is transported; and the company accepting the same for transportation, shall give to the owner thereof, or to the person in charge of the well or wells from which such petroleum has been produced and run, a ticket signed by its gauger, stating the number of feet and inches of petroleum which were in the tank or receptacle containing the same before the company began to run the contents from said tank, and the number of feet and inches of petroleum which remained in the tank after said run was completed; and all deductions made for water, sediment or the like, shall be made at the time such petroleum is measured; and within reasonable time thereafter said company shall, upon demand, deliver from the petroleum in its custody to the owner thereof, or to his assignee, at such delivery station on the route of its line of pipes as he may elect, a quantity of merchantable petroleum, equal to the quantity of petroleum run from said tank, or receptacle, which shall be ascertained by computation; except that the said company transporting said petroleum may deduct for evaporation and waste two per centum of the amount of petroleum so run, as shown by said run ticket; and except that in case of loss of any petroleum while in the custody of said company caused by fire, lightning, storm or other like unavoidable cause, such loss shall be borne pro rata by all the owners of such petroleum at the time thereof. But said company shall

be liable for all petroleum that is lost while in its custody by the bursting of pipes or tanks, or by leakage from pipes [fol. 1024] or tanks; and it shall also be liable for all petroleum lost from tanks at the wells where produced before the same has been received for transportation, if such loss be due to faulty connections made to said tanks; and said company shall be liable for all petroleum lost by the overflow of any tanks with which pipe line connections have been made, if such overflow be due to the negligence of such company; and for all the petroleum lost by the overflow of any tanks with which pipe line connections should have been made under the provisions of this act, but were not so made by reason of negligence or delay on the part of said company.

SEC. 2835. *Charge for transportation and delivery.*—7. Any company engaged in transporting petroleum of a gravity exceeding thirty-five degrees Baumé at a temperature of sixty degrees Fahrenheit, by means of pipe line or lines, may charge for receiving, transporting and delivering such petroleum not to exceed twenty cents per barrel for each barrel of forty-two gallons; Provided, however, if where the point of delivery is without this State, more than twenty cents per barrel be charged, then there shall be charged no greater sum than ten cents per barrel for receiving such oil and transporting the same that part of the distance which is within this State.

SEC. 2836. *Same—Time for commencement of charge—Deductions for waste and evaporation.*—8. Any company engaged in transporting or storing petroleum of a gravity exceeding thirty-five degrees Baumé at a temperature of sixty degrees Fahrenheit, by means of pipe line or lines and tanks, shall make no charge for storing said petroleum until after the expiration of the month following that in which the oil was run and received into custody. But it may charge for storing said petroleum of a gravity exceeding thirty-five degrees Baumé at a temperature of sixty degrees Fahrenheit, for every day after the expiration of the month following that in which said oil shall have been run and received into custody, not to exceed one-fortieth of one cent per barrel of forty-two gallons for each day thereafter said oil shall continue to [fol. 1025] remain in its custody. And such company shall

make no charge for water, sediment, waste and the like in transporting or storing any petroleum after the same has been gauged or measured, before the run of the same is made, except the two per centum for waste and evaporation, hereinbefore mentioned.

SEC. 2837. *Discrimination prohibited.*—9. No company engaged in transporting or storing petroleum by means of pipe line or lines and tanks shall charge, demand or receive from any corporation, company, association, person or persons a greater or less rate for the transportation or storage of petroleum than it charges, receives or demands from any other corporation, company, association, person or persons for the transportation or storage of petroleum of like gravity; and any shift, device or subterfuge made or attempted for the purpose of avoiding the provisions of this section shall be void.

SEC. 2838. *Penalties—Damages for excessive charges.*—10. Any company, its officers or agents, wilfully violating any of the provisions of sections two, three, four, five, six, seven, eight or nine, of this act, or charging for any of the services provided for in any of said sections, an amount in excess of that authorized by said sections, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars, nor more than one thousand dollars, and shall moreover be liable to the party aggrieved for all damages sustained by him by reason of such excessive charges.

SEC. 2839. *Lien for charges.*—11. Any company engaged in transporting or storing petroleum, shall have a lien upon said petroleum until all charges for transporting and storing said petroleum are paid.

SEC. 2840. *Negotiability of accepted orders and certificates.*—12. Accepted orders and certificates for petroleum, issued by any company engaged in the business of transporting and storing petroleum in this State, by means of pipe line or lines and tanks, shall be negotiable, and may [fol. 1026] be transferred by endorsement, either in blank or to the order of another, and any person to whom the said accepted orders and certificates shall be so transferred, shall be deemed and taken to be the owner of the petroleum therein specified.

SEC. 2841. *Receipts, certificates, etc.—Unauthorized issuance—Duplicates—Surrender—Loss—Cancellation.*— 13. No receipt, certificate, accepted order or other voucher, shall be issued or put in circulation nor shall any order be accepted or liability incurred for the delivery of any petroleum, crude or refined, unless the amount of such petroleum represented in or by such receipt, certificate, accepted order, or other voucher or liability, shall have been actually received by and shall then be in the tanks and lines, custody and control of, the company issuing or putting in circulation such receipt, certificate, accepted order or voucher, or written evidence of liability. No duplicate receipt, certificate, accepted order or other voucher shall be issued or put in circulation, or any liability incurred for any petroleum, crude or refined, while any former liability remains in force, or any former receipt, certificate, accepted order or other voucher shall be outstanding and uncancelled, except such original paper shall have been lost, in which case a duplicate plainly marked "duplicate" upon the face, and dated and numbered as the lost original was dated and numbered, may be issued. No receipt, voucher, accepted order, certificate or written evidence of liability of such company on which petroleum, crude or refined, has been delivered, shall be re-issued, used or put in circulation. No petroleum, crude or refined, for which a receipt, voucher, accepted order, certificate or liability incurred, shall have been issued or put in circulation, shall be delivered, except upon the surrender of the receipt, voucher, order or liability representing such petroleum, except upon affidavit of loss of such instrument made by the former holder thereof. No duplicate receipt, certificate, voucher, accepted order or other evidence of liability, shall be made, [fol. 1027] issued or put in circulation until after notice of the loss of the original, and of the intention to apply for a duplicate thereof, shall have been given by advertisement over the signature of the owner thereof in at least four successive issues of a daily or weekly newspaper published in the county where such duplicate is to be issued. Every receipt, voucher, accepted order, certificate or evidence of liability, when surrendered, or the petroleum represented thereby delivered, shall be immediately cancelled by stamping and punching the same across the face in large and legible letters with the word "cancelled,"

and giving the date of such cancellation; and it shall then be filed and preserved in the principal office of such company for the period of six years.

Sec. 2842. *Sale, incumbrance, etc., without consent of owner.*—14. No company, its officers or agents, or any person or persons engaged in the transportation or storage of petroleum, crude or refined, shall sell or encumber, ship, transfer, or in any manner remove or procure, or permit to be sold, encumbered, shipped, transferred, or in any manner removed from the tanks or pipes of said company engaged in the business aforesaid, any petroleum, crude or refined, without the written order of the owner or owners thereof.

Sec. 2843. *Monthly statements.*—15. Every company now or hereafter engaged in the business of transporting by pipe lines, or storing crude or refined petroleum in this State, shall, on or before the tenth day of each month, make or cause to be made and posted in its principal business office in this State in an accessible and convenient place for the examination thereof by any person desiring such examination, and shall keep so posted continuously until the next succeeding statement is so posted, a statement plainly written or printed, signed by the officer, agent, person or persons having charge of the pipes and tanks of said company, and also by the officer or officers, person or persons, having charge of the books and accounts thereof, which {fol. 1028} statement shall show in legible and intelligent form the following details of the business:

First. How much petroleum, crude or refined, was in the actual and immediate custody of such company at the beginning and close of the previous month, and where the same was located or held; describing in detail the location and designation of each tank or place of deposit, and the name of its owner.

Second. How much petroleum, crude or refined, was received by such company during the previous month.

Third. How much petroleum, crude or refined, was delivered by such company during the previous month.

Fourth. For how much petroleum, crude or refined, such company was liable for the delivery or custody of to other

corporations, companies or persons at the close of the month.

Fifth. How much of such liability was represented by outstanding receipts or certificates, accepted orders or other vouchers, and how much was represented by credit balances.

Sixth. That all the provisions of this act have been faithfully observed and obeyed during the said previous month.

The statement so required to be made shall also be sworn to by said officers, agent, person or persons before some officer authorized by law to administer oaths, which oath shall be in writing, and shall assert the familiarity and acquaintance of the deponent with the business and condition of such company, and with the facts sworn to, and that the statements made in the said report are true.

Sec. 2844. *Same—Specification of amounts—Duty to keep on hand oil equal to aggregate outstanding receipts, etc.*—16. All amounts in the statements required by this act, when the petroleum is handled in bulk, should be given in barrels and hundredths of barrels reckoning forty-two gallons to each barrel, and when such petroleum is handled in barrels [fol. 1029] or packages, the number of such barrels or packages shall be given, and such statements shall distinguish between crude and refined petroleum, and give the amount of each. Every company engaged in the business aforesaid, shall at all times have in their pipes and tanks an amount of merchantable oil equal to the aggregate of outstanding receipts, certificates, accepted orders, vouchers, acknowledgements, evidences of liability, and credit balances, on the books thereof.

Sec. 2845. *Penalties for unauthorized issuance of receipts, etc.*—17. Any company, its officers or agents, who shall make or cause to be made, sign or cause to be signed, issue or cause to be issued, put in circulation or cause to be put in circulation, any receipt, accepted order, certificate, voucher or evidence of liability, or shall sell, transfer or alter the same, or cause such sale, transfer or alteration, contrary to the provisions of this act, or shall do or cause to be done, any of the acts prohibited by the thirteenth section of this act, or omit to do any of the acts by said section directed, shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of not exceeding one thousand dollars, and undergo imprisonment not less than ten days nor exceeding one year.

Sec. 2846. *Penalties for unauthorized sales, incumbrances, etc.*—18. Any company, its officers, or agents, who shall sell, encumber, transfer or remove, or cause or procure to be sold, transferred or removed from the tanks or pipes of such company, any petroleum, crude or refined, without the written consent of the owner or owners thereof, shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of one thousand dollars and undergo an imprisonment of not less than ninety days and not exceeding one year.

Sec. 2847. *Penalties for failure to make reports.*—19. Any company engaged in the business of transporting by pipe lines or storing petroleum, crude or refined, and each [fol. 1030] and every officer or agent of such company who shall neglect or refuse to make the report and statement required by the fifteenth section of this act, within the time and the manner directed by said section, shall forfeit and pay the sum of one thousand dollars, and in addition thereto the sum of five hundred dollars for each day after the tenth day of the month that the report and statement required by said section fifteen shall remain unposted as therein directed.

Sec. 2848. *Examination of companies.*—20. The holder of any receipts, certificates, accepted orders, or other vouchers or evidences of liability, or the owners of oil in the custody of any such company described and referred to in this act, to an amount not less in the aggregate than ten thousand barrels of petroleum, crude or refined, may at any time present their petition to the circuit court of any county, wherein such company may be engaged in business or have its principal office, or to any judge of said court in vacation, setting forth under oath, their ownership as aforesaid and desire for the appointment of examiners for the purposes of this section; and upon such petitioners giving bonds to be approved by the court or by the judge granting the order that they will pay all expenses and costs that may accrue in the proceedings, the court, or any judge thereof in vacation, shall forthwith appoint such number of impartial, disinterested and expert persons as may be asked for in said petition, as examiners, and shall fix the amount of their compensation; and the court or judge by order, shall direct and empower such examiners to immediately inspect and measure all the petroleum, crude or refined, in the custody of any such company named in the

said petition, on the day of such inspection, and to examine the books of said company relating to the issue and cancellation of receipts, certificates, accepted orders, vouchers, or evidences of liability, and to its open accounts with persons, companies or corporations with whom it deals in the receipt and delivery of crude or refined petroleum. Such examiners when so appointed shall each immediately be [fol. 1031] sworn before any authorized officer to perform his duties with fidelity and according to law, which oath shall be reduced to writing, signed and filed with the clerk, and they shall then make immediate inspection, examination and measurement, as required by said petition and order and by this act. And it shall be the duty of each and every such company, its officers, agents and employees, to give immediately upon request of any such authorized examiners, all the information demanded in said petition and required by this act to be reported, and also full access to the offices, tanks, pipes, books and accounts of such company. Upon the completion of such inspection, measurement and examination, it shall be the duty of the examiner or examiners, or in the event of the death, resignation, declination or inability to act of any of them, then the others, or any of them within ten days after their appointment to make to the court appointing them, a written, signed and sworn report of such examination, inspection and measurement, and file the same of record with the clerk thereof, which report shall show:

First, How much merchantable and also how much unmerchantable petroleum, crude or refined, they found in the tanks and lines of such company, and where the same was located or held by description of tanks.

Second. For the custody or delivery of how much crude or refined petroleum they found such company to be liable at the same date.

Third. How much of such liability was represented by outstanding receipts, accepted orders, certificates, vouchers, or evidence of liability, and how much by credit balances.

Sec. 2849. *Offenses by examiners.*—21. Any examiner so appointed as aforesaid who shall make any false examination, inspection, measurement or report, or shall make known directly or indirectly to any person any information he may become possessed of in the course of his examina-

tion, inspection or measurement, except by means of his [fol. 1032] report made and filed in accordance with this act, or who shall receive directly or indirectly any fee, reward or benefit, or the promise of any fee, reward or benefit, other than that provided by this act, for the performance or non-performance of any duty or thing contemplated by this act, or connected with his said employment, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of one thousand dollars, and may at the discretion of the court, be confined in jail not to exceed one year.

Sec. 2850. *Same—Refusal to furnish information, etc.—Penalties.*—22. Any officer, agent, manager, superintendent or employe of any company engaged in the transportation by pipe lines of petroleum, crude or refined, or the storage thereof, who shall refuse or neglect after demand made to give to any authorized examiner full and free access to any and all offices, pipes, tanks, accounts, books and vouchers required by him in the pursuance of his appointment and this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not exceeding one thousand dollars, and may at the discretion of the court be confined in jail not to exceed one year.

Sec. 2851. *Repeal.*—23. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Eminent Domain

Sec. 2229. *Corporations for transportation of natural gas, water, etc.—Powers—Duties and liabilities as common carriers.*—24. That a company organized for the purpose of transporting natural gas, petroleum or water, necessary for use in carrying out the provisions of this act in piping and transporting natural gas and petroleum or for boring for the same, through tubing and pipes, may enter upon any land for the purpose of examining and surveying a line for its tubing and pipes, and may appropriate so much thereof as may be deemed necessary for the laying down of such tubing and [fol. 1033] piping, and for the erection of tanks and the location of stations along such line, and the erection of such buildings as may be necessary for the purpose aforesaid; such appropriations shall be made and conducted in accordance with the law providing for compensation to the owners

of private property taken for public use; Provided, That no dwelling house, yard or garden, shall be taken for such purpose, nor shall any oil tank, gas or oil pipe line be erected or laid within one hundred feet of any occupied dwelling house without the consent of the owner thereof. And so far as the rights of the public therein are concerned, the county commissioners as to public roads, and the council of any municipal corporation, as to streets and alleys, in their respective jurisdiction, may, subject to such regulations and restrictions as they may prescribe, grant to such company the right to lay such tubing and piping therein: Provided, however, The right to appropriate for any of the purposes herein above specified shall not include or extend to the erection of any tank, station or building, or lands thereof, or to more than one continuous line of pipe or tubing, or land therefor, in or through a municipal corporation without the council first consents thereto; and all excavations shall be well filled by such company and so kept by it, in all cases. Such company shall, for the purpose of transporting natural gas, oils and water, be considered and held to be a common carrier, and subject to all the duties and liabilities of such carriers under the laws of this State.

[fol. 1034] Wyoming

The Constitution of Wyoming, Section 7, Article X, title "Corporations," provides:

Sec. 7. *Common carriers, who are.*—All corporations engaged in the transportation of persons, property, mineral oils, and mineral products, news or intelligence, including railroads, telegraphs, express companies, pipe lines and telephones, are declared to be common carriers.

Mullen's Wyoming Compiled Statutes, 1910, chapter 27? (act of 1891), title "Railroad Corporations," provides, by Sections 4200 and 4201 for the power of eminent domain, which sections are made applicable to oil companies:

Sec. 4202. *Applicable to oil companies.*—The last two preceding sections shall also apply to all petroleum oil corporations, companies and individuals, for the right of way ten feet wide, through the school and other lands, over which the state has control, for the purpose of carrying oil through pipes, also land for pump stations, tanks and other buildings, necessary to conduct the oil product of the wells of Wyoming.

[fol. 1035] EXHIBIT "D"

To the Petition for Rehearing

Nos. 481, 482, 483, 506, 507, 508

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1913

No. 481. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and Cornplanter Refining Company, Appellants,

v.

THE OHIO OIL COMPANY

No. 482. THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellants,

v.

STANDARD OIL COMPANY

No. 483. THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellants,

v.

STANDARD OIL COMPANY OF LOUISIANA

No. 506. THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellants,

v.

PRAIRIE OIL & GAS COMPANY

No. 507. THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellants,

v.

THE UNCLE SAM OIL COMPANY

No. 508. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WELLSVILLE REFINING COMPANY, Appellants,

v.

ROBERT D. BENSON ET AL., PARTNERS DOING BUSINESS UNDER THE PARTNERSHIP NAME OF THE TIDEWATER PIPE COMPANY, LTD.

Appeals from the United States Commerce Court

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION

Charles W. Needham, Assistant Solicitor.

[fol. 1036] Index

	Original Print
Questions and act involved	2, 5
Legislative reasons for the enactment	2
Appeals from interlocutory orders	2, 8
The commission's order	3
The commission's report	4
Contentions by appellees	4
The act involved	5
Amendment to section 1	5
Act of June 29, 1906	5
Holdings of the Commerce Court	5
Decree of Commerce Court final in effect	8
Questions of law	10
Discussion of questions of law, begins	40
General statement of facts, begins	10
Particular facts regarding each of the appellees, begins	28
Public interest	11
Statistics	11
Importance of petroleum industry	12
Uses of petroleum	12
Fields of production	13
Refineries, location	13
Transportation of crude oil	14
Importance of transportation charges to the public	16
Method of controlling the price and distribution of crude oil by pipe lines	17
Percentage of oil refined by Standard Oil Co.	20
Independent refiners	20
The monopoly	21
Public markets for crude oil	23
Right of way for pipe lines	24
Franchises	25
Eminent domain	27
Ohio Oil Co.	28
Standard Oil Co., its pipe lines and refineries	28
The Standard Oil Co. of Louisiana	34
Prairie Oil & Gas Co.	34
The Tidewater Pipe Co. (Ltd.)	38
Conclusions of fact	39
Discussion of first law point: Business affected with a public interest	40

	Original Print
Power of body politic over individual and private property	40
[fol. 1037] Virtual monopoly	43, 45
Private business may become a monopoly	45
Monopoly not a question of declaration but of fact	46
No vested rights accrue before regulations are passed	47
Statute valid where the compensation for part of the service is at cost	49
Private telephone company a common carrier	53
Private warehousemen, have assumed public obligation	54
Associated Press, can not discriminate	55
Board of trade charged with public interest	56
Franchises, *quasi public*	59
Public markets, defined	59
Extent of regulation, when public interested	61
Public interest in pipe lines	63
Conditions when the act is passed determine its validity	64
The remedy—extent of public interest	64
The producer will not ship	65
Buyers in the field, when the carriage is by common carrier	65, 88
Connection of the subject with interstate commerce	66
The commodities clause act	67
Discrimination cause for separating buying and selling from transportation	67
Construction of act of June 29, 1906	68
Debates in Congress—Lodge amendment	70
Remarks by—	
Senators Foraker	70
Tillman	71, 79
Clay	71, 78
Lodge	71, 72, 80
Culberson	72
Nelson	72, 77
Hopkins	76
Morgan	77
Teller	78
Stone	79
Bacon	79
Elkins	81

	Original Print
Long	81, 82
Mallory	81
Richardson	82
President Taft	76
In the House: Mr. Rhinock	83
Conclusions drawn from debates	85
Rules of construction	86
Aids to construction	87
The purpose of the act	87
To destroy a monopoly is a proper object of legislation under the commission clause	89
[fol. 1038] The wording and meaning of the statute	91
Act analysis	91
Language of the act plain	92
The act constitutional	93
Power of Congress over interstate commerce	93
Power to prohibit commerce	94
Fifth amendment	98
Effect of the act upon business of appellees	99
Three appellees—buyers and transporters	99
Transportation a separate business	99
Three appellees—refiners and transporters	101
Pipe lines carry all the traffic	103
Weems case	104
The commodities clause case	104
Legislative reasons for legislation	106
Summary	111

[fol. 1039] Statutes Cited

Act of February 8, 1897 (29 Stat., 512, c. 172)	62
Act of Congress, July 29, 1906	5, 40, 67, 68, 70, 85, 91
Act of Congress, June 18, 1910	92
Act of Illinois declaring warehouses public	44
Alabama statute	52
Embargo act, December 22, 1807	95
33 Stat. L., 65	26, 36

[fol. 1040] Cases Cited

Adair v. United States (208 U. S., 161)	67
Allnutt v. Inglis (12 East. 527)	42
Armour Packing Co. v. United States (209 U. S., 56)	109

	Original Print
Budd v. State of New York (143 U. S., 517)	48
Chesapeake & P. Teleph. Co. v. B. & O. Teleg. Co., (66 Md., 399)	53
Davis v. State (68 Ala., 58)	53
De Portibus Maris (1 Harg. L. Tr., 78)	41, 42
Dow v. Beidelman (125 U. S., 680)	51
Gibbon v. Ogden (9 Wheaton, 1)	93, 96
Hockett v. State (105 Ind., 250)	53
Hoke and Economides v. United States (227 U. S., 308)	63, 94
Inter-Ocean Publishing Co. v. Associated Press (184 Ill., 438; 48 L. R. A., 568)	56
Johnson v. Railroad (196 U. S., 1)	66
Lottery Case (188 U. S., 321)	94, 99
Munn v. People of Illinois (94 U. S., 113)	40-48, 100
Nash v. Page (80 Ky., 539; 44 Am. Rep., 490)	55
New Haven Railroad v. Interstate Commerce Commission (200 U. S., 361)	67, 97, 98, 99
New York & Chicago Grain & Stock Exchange v. Chicago Board of Trade (127 Ill., 153; 2 L. R. A., 411)	59
Northern Securities Co. v. United States (193 U. S., 197)	66
North. Trans. Co. v. Chicago (99 U. S., 635)	99
Pearsall v. Great Northern Ry. Co. (161 U. S., 646)	89, 111
Reid v. Colorado (187 U. S., 137)	63
Ruggles v. People (91 Ill., 256)	52
Sawyer v. Davis (136 Mass., 239)	53
Sinking Fund Cases (99 U. S., 200)	50
Southern Ry. Co. v. United States (222 U. S., 26)	99
Spring Valley Water Works v. Schottler (110 U. S., 347)	51
Standard Oil Case (221 U. S., 1)	11, 22, 29, 87
State Tax on R. Gross Receipts (15 Wall., 293)	47
State v. Columbus G-L. & C. Co. (34 Ohio St., 572)	52
State v. Nebraska Teleph. Co. (22 N. W. Rep., 237)	54
Thorpe v. R. R. Co. (27 Vt., 143)	41
Union Bridge Co. v. United States (204 U. S., 364)	99
United States v. Balt. & Ohio R. R. Co. (225 U. S., 306)	9
United States v. Brigantine *William* (2 Hall's Am. Law Journal, 255)	96, 106

	Original Print
United States v. Delaware & Hudson Co. (213 U. S., 366)	67, 109
[fol. 1041] United States v. Knight (156 U. S., 112)	90
United States v. Lehigh Valley R. R. Co. (220 U. S., 357)	68, 105
United States v. Popper (98 Fed. Rep., 423)	62
United States v. Union Pac. R. R. Co. (91 U. S., 79)	87
Webster Telephone Case (17 Nebr., 126)	53
Weems Steamboat Co. v. Peoples Co. (214 U. S., 345)	104
W. W. Cargill Co. v. Minnesota ex rel. Railroad & Warehouse Commission (180 U. S., 452)	24, 60, 94

[fol. 1042] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1913

Nos. 481, 482, 483, 506, 507, 508

No. 481

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and Cornplanter Refining Company, Appellants,

v.

THE OHIO OIL COMPANY

No. 482

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellants,

v.

STANDARD OIL COMPANY

No. 483

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellants,

v.

STANDARD OIL COMPANY OF LOUISIANA

No. 506

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellants,

v.

PRAIRIE OIL & GAS COMPANY

No. 507

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellants,

v.

THE UNCLE SAM OIL COMPANY

No. 508

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and Wellsville Refining Company, Appellants,

v.

ROBERT D. BENSON et al., Partners Doing Business under the Partnership Name of The Tidewater Pipe Company, Ltd.

Appeals from the United States Commerce Court

[fol. 1043] Brief on Behalf of the Interstate Commerce Commission

Questions Involved

These cases involve the construction and constitutionality of an act of Congress, approved June 29, 1906, amending section 1 of the act to regulate commerce, bringing the interstate transportation of oil by pipe lines under the act, and declaring that the agents of such commerce "shall be considered and held to be common carriers within the meaning and purpose of this act."

Legislative Reasons

The moving cause of this legislation was to prevent the monopoly of petroleum by the practice—(1) of pipe lines buying crude oil at the wells, for the Standard Oil Company's refineries, at arbitrary prices fixed by the Standard Oil Company; (2) of pipe lines refusing to transport any oil unless the title to the oil was vested in the pipe line, the producer agreeing to accept therefor the price so fixed; and (3) of the pipe lines refusing to deliver crude oil to independent refineries.

Appeals

These appeals were taken from the interlocutory decrees of the Commerce Court granting preliminary injunctions restraining the enforcement of an order entered by the Interstate Commerce Commission on the 3d day of June, A. D. 1912. The order was entered in a proceeding then pending before the Commission entitled "In the matter of Pipe [fol. 1044] Lines" (No. 4199). In that proceeding the appellees, with others, were made respondents (Rec., No. 481, pp. 7 and 8), and they appeared and were given a full hearing. A report was made by the Commission giving its conclusions as required by law. (Rec., 481, p. 45; 24 I. C. C. Rep., 1.)

The Commission's Order

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 3d day of June, A. D. 1912.

No. 4199

In the Matter of Pipe Lines

This proceeding having been instituted by the Commission on its own motion, and investigation having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That respondents, The Oklahoma Pipe Line Company, The Prairie Oil & Gas Company, Standard Oil Company of Louisiana, The Ohio Oil Company, Standard Oil Company of New Jersey, The Tidewater Pipe Company, Limited, Producers & Refiners Oil Company, Limited, United States Pipe Line Company, Pure Oil Company, Pure Oil Pipe Line Company, The National Pipe Line Company, The Uncle Sam Oil Company, and The Uncle Sam Oil Company of Kansas be, and they are hereby, notified and required to file with this Commission, on or before the 1st day of September, [fol. 1045] 1912, schedules of their rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce. (Record No. 481, pp. 8, 9, and 56.)

It will be observed that this order is nothing more nor less than the requirement, relating to rates, in section 6 of the act to regulate commerce. If these pipe lines are subject to the act it was and is their duty to file schedules of their rates as required by the statute.

Commission's Report

The Commission entered the order against the appellants herein upon findings of fact and conclusions set forth in its said report (Rec., No. 481, p. 45; 24 I. C. C., 1). The report is referred to and made a part of the order. This report found that each appellee was engaged in the transportation of oil by pipe lines from one State to another State in the United States and was a carrier subject to the act.

Contention by Appellees

The contention of the appellees before the Commission and before the Commerce Court was that they are not com-

mon carriers subject to the act because they have not transported and do not hold themselves out to transport, oil for the public, but only transport "their own oil," purchased in the manner hereinafter set forth.

The Commission found, and the answers of the Commission in the Commerce Court alleged, that the appellees are [fol. 1046] engaged in the interstate transportation of oil by pipe lines; that such transportation is commerce over which Congress has plenary power; that Congress may determine by what agents such commerce shall be carried; and that, by the said amendment of June 29, 1906, Congress declared that the agents thereafter engaged in carrying on such transportation or commerce "shall be considered and held to be common carriers" under the act. These carriers were, therefore, ordered to file with the Commission schedules of their rates and charges for the transportation of oil in compliance with the provisions of section 6 of the act to regulate commerce.

Amendment to Section 1

The essential portion of the amendment to section 1 of the act to regulate commerce, approved June 29th, 1906, involved in this controversy, reads as follows:

> That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil * * * by means of pipe lines * * * from one State, to any other State, who shall be considered and held to be common carriers within the meaning and purpose of this act.

Decision by the Commerce Court

The Commerce Court held (1) that the appellees were private pipe-line companies; (2) that Congress had no power to compel them to be common carriers, nor could it, [fol. 1047] under its regulating power, deprive them of the right to carry oil, in interstate commerce, as private carriers; (3) that the amendment of 1906 in terms applies to the appellees, "in common with other pipe-line companies of like character and business"; (4) that said act of Congress was therefore "an exertion of power in excess of constitutional limitations"; and (5) that said legislation "invades the rights secured to these petitioners by the fifth amendment."

In reference to the monopoly created by this method of carriage the Commerce Court said:

> It will be observed that the amendment makes no mention of monopoly and therefore does not purport on its face to be a measure for breaking up an alleged monopoly and preventing its continuance. But disregarding the absence of any declared purpose, and taking into account the circumstances under which the amendment was adopted, we may properly consider its validity upon the assumption that the real though undisclosed purpose was to destroy that degree of control of the oil business which is claimed to result from the private ownership of pipe lines and which is asserted to be monopolistic. (Record, 481, p. 121, Op. p. 33.)
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> • • • • • • •
>
> True, the possession of a pipe line enables its owner to transport his oil to the refinery or other market at very small cost compared with any other means of conveyance. The practical result may be, and in most in- [fol. 1048] stances doubtless would be, that other producers find it to their interest to sell the output of their wells to the owner of the pipe line, and in this sense it may be said that they are obliged to sell to him. Granted that his pipe line give him such command that he is able to control or even fix the selling price of the crude article in that particular field or territory, upon what sustainable theory can it be claimed that other producers are deprived of anything which rightfully belongs to them because they do not or can not provide themselves with the same means of reaching the market? (Rec., p. 125; Op., p. 37.)
>
> • • • • • • •
>
> In the nature of things one who owns private property of substantial value has an advantage over those not fortunate enough to have similar possessions, and this advantage ranges through all degrees. It frequently results in commercial dominance of precisely the same sort and quite as complete as the alleged monopoly here considered. But the advantage so acquired, whatever its degree, is not monopolistic, nor are we able to see that it has any tendency, much less an

inevitable tendency, to bring about the conditions which constitute an unlawful monopoly, except upon the socialistic theory that all private ownership is indefensible and that everything should be held in common. (Rec., p. 126; Op., p. 38.)

* * * * * * *

It may be that the greater number of oil producers are virtually compelled to sell their output to the own- [fol. 1049] ers of private pipe lines, because they are unable or unwilling to build pipe lines of their own, or because there are no common-carrier pipe lines to which they have access, but we are quite unable to see how the situation in which such producers are placed gives them the right, or what constitutional power Congress can exert to endow them with the right, to use the private lines of petitioners and other private companies, or how the denial of such use is a monopolistic exclusion or indicates a tendency to monopoly which deprives these private owners of the protection guaranteed by the fifth amendment. In our judgment there is no basis for the contention that the pipe-line amendment has any real or substantial relation to the monopoly alleged to result from the nature and methods of pipe-line transportation. (Rec., p. 127; Op., p. 39.)

Decree in Effect Final

The decree of the Commerce Court granted a preliminary injunction, but the decision in effect determines the controversy by declaring the act of Congress unconstitutional and void as against these appellees. The cases below were argued upon the understanding that the decision, if in favor of the appellees, would in effect be a final decree, while if in favor of the contentions by the Commission it would leave no other question to be determined in the cases, and the petitions would have to be dismissed. Expressing this view, the Commerce Court concludes its opinion by saying:

[fol. 1050] Without reference to other considerations which might justify preliminary injunctions in these cases, we have purposely placed our decision upon grounds which in effect determine the controversy, and we have done so to avoid occasion for pro-

tracted trials and to aid an early review by the court of last resort. (Rec., p. 137; Op., p. 49.)

In thus disposing of the cases, the Commerce Court acted in accordance with the suggestion of this court as to a proper disposition of a case upon a preliminary motion which involves a determination on the merits. This court, in remanding a case upon an appeal from an interlocutory order so that there might be opportunity to dispose of it on the merits, speaking through the Chief Justice, said:

> Of course, in saying this, we must not be understood as deciding or in any way implying that the duty would not exist to examine the merits of a preliminary order of the general character of the one before us in a case where it plainly in our judgment appeared that the granting of the preliminary order was in effect a decision by the court of the whole controversy on the merits or where it was demonstrable that grave detriment to the public interest would result from not considering and finally disposing of the controversy without remanding to enable the court below to do so. (*U. S.* v. *Balt. & Ohio R. R. Co.*, 225 U. S., 306, 326.)

These cases, therefore, are presented for final determination, upon the records herein. The errors assigned raise the following

[fol. 1051] Questions of Law

I

Is the business of the appellees affected with a public interest to an extent that it ceases to be *juris privati* only?

II

Does the act to regulate commerce, as amended by the act of June 29, 1906, require that all persons and corporations thereafter transporting oil by pipe lines shall be common carriers under and subject to the act?

III

If the act as amended does require that all corporations and persons thereafter engaged in the interstate trans-

portation of oil by means of pipe lines shall be common carriers, is the act constitutional?

General Statement of Facts

Before discussing these questions of law, it is important to state the essential facts as they appear in the record. These facts are found in the allegations of the petitions, the report of the Interstate Competitions, the sworn answers of the Interstate Commerce Commission (used as affidavits on the hearing for preliminary injunction), the answers of the United States, and affidavits presented by petitioners upon the motion for preliminary injunction. There are also official records and public documents, of which this court takes judicial notice, to which reference is made, principaliy the record and decisions of the court [fol. 1052] in the Standard Oil case (221 U. S., p. 1), and the debates in Congress upon the amendment of June 29, 1906, now requiring construction by this court.

Public interest.—The business of transporting petroleum is "clothed with a public interest." The production of crude oil, its grading and measurement, its transportation and distribution, are matters in which the public is deeply concerned. The extent of the public interest is shown by the amount of oil produced; the uses to which the oil and its products are put; the necessity of transporting the crude oil from the fields of production to refineries in distant parts of the country; the effect of the cost of transportation upon production and consumption; and the effect, upon all these interests, of a practice resulting in a monopoly of the crude oil.

Statistics.—The statistics here given are (1) those for the year 1905—which were before Congress when it passed the act in controversy—and (2) those for the year 1911, the last available figures. They are taken from public documents and records as follows: Report of the Commissioner of Corporations on the Transportation of Petroleum, May 2, 1906; Report of the Commissioner of Corporations on the Petroleum Industry, March 20, 1907: Statistical Abstract of the United States for 1907 and 1912, and statistics and other facts stated in the petitions and in the answers of the Interstate Commerce Commission and exhibits, in the pending cases.

[fol. 1053] *Importance of the petroleum industry.*—The production of crude petroleum throughout the world in

1905 was 215,000,000 barrels (42 gallons each), of which 134,717,580 barrels, or more than 60 per cent, was produced in the United States. The greater portion of that produced in the United States came from the fields east of the Rocky Mountains. The value of this product for the year 1905, fixed by the prices of the Standard Oil Company, was nearly $120,000,000.

The first statistical information regarding this product was for the year 1860, when the quantity produced in the United States was only 84,000 *gallons*. In 1905 the production had increased to 5,658,138,360 *gallons*.

In 1911 the production in the United States had increased in quantity to 220,449,391 *barrels*. The value of this product for 1911, at prices arbitrarily fixed by the Standard Oil Company, was $134,044,752. While the quantity had increased by nearly 86 million barrels the value had increased only 15 million dollars. With free competition this product should have brought the producers from 150 to 200 millions of dollars without materially increasing the cost to the consumer of the refined product.

Uses.—The refined oil is used for illumination over the civilized world. For power and heating purposes petroleum and its products are widely used, and their use is increasing. For lubricating oils and in the manufacture of a multitude of by-products it forms the bases of large industrial operations. In fact its use is so general, [fol. 1054] and so diversified, and so essential to modern civilized life, that it must be put in the category of *necessities*.

Fields of production.—Crude oil is produced in various sections of the country described as "fields." The most important of these are the Appalachian field, covering parts of the States of New York, Pennsylvania, West Virginia, southeastern Ohio, Kentucky, and Tennessee; the Lima-Indiana and Illinois field, covering parts of northwestern Ohio, Indiana, and Illinois; the Mid-Continent field, covering parts of the States of Kansas and Oklahoma; the Gulf field, covering parts of the States of Louisiana and Texas; the Caddo field in Louisiana and Texas, and others in the States of California, Wyoming, Michigan, and Missouri. The important fields, east of the Rocky Mountains, together with the pipe lines and refineries, are shown upon the map attached to the answers of the Interstate Commerce Commission. (Rec. No. 481, p. 60.) In

each of these fields there are thousands of wells from which crude oil is obtained, owned and operated by private citizens. The oil east of the Rocky Mountains is not suitable for domestic use, and therefore it must be refined.

Refineries.—The Standard Oil Company has refineries at numerous strategic points. Of its eighteen refining plants, seven, including the two largest, are on the Atlantic seaboard—five on New York Harbor (including Bayonne, N. J.), one at Philadelphia, another at Baltimore. The location of refiners on the seaboard is of great advantage [fol. 1055] in view of the immense foreign trade and the heavy consumption of refined oil on the seaboard. Five smaller plants are in the vicinity of the Appalachian field, two in Ohio, near the Lima, Ind., field, and another large plant is at Whiting, Ind. From these refineries the Standard can conveniently reach the great markets of the Middle West and South. It has a refinery at Sugar Creek, Mo., and another at Neodesha, in southern Kansas.

Since the hearing of the testimony in the original Standard Oil case *supra*, the Standard located a large refinery at Baton Rouge, La., served by the pipe line operated by the Standard Oil Company of Louisiana (No. 483). This company was organized in April, 1909. There were in 1906 independent refineries, but the proportion of oil refined by the Standard Oil refineries was 84.2 per cent of the crude oil marketed; the balance, 14.8 per cent, was refined by the independent refineries.

Transportation of crude oil.—It will be observed from the location of the fields of production and the location of refineries that the transportation of crude oil is of very great importance to producers and consumers. The refineries are located in the eastern part of the country for convenience to the markets. The transportation of the crude oil varies in distance up to approximately 1,500 miles. The cost of transporting by pipe lines is estimated at one-fourth (possibly one-fifth) the cost of transportation by rail. This method of transportation has had an [fol. 1056] important influence in determining the location and the building of refineries.

Pipe lines.—The use of pipe lines has been the most potent factor in enabling the Standard Oil Company to secure and maintain a dominant control of the petroleum industry. No producer, or refiner, or dealer in oil, can enter or compete in this industry without access to pipe

lines. To be obliged to transport the crude oil any great distance by railroad is absolutely prohibitive.

Transportation by pipe lines began in 1865, but the main development has been since 1879.

Practically all of the crude oil produced in the United States is now transported to the refineries by means of pipe lines. A network of small pipes gathers the oil from the wells into tanks, and trunk lines, hundreds of miles in length, singly or in connection with other lines, convey it to the refineries.

The refined products of petroleum are transported mainly by rail and water in barrels or tanks. This is so because the refined article goes to a multitude of points for consumption and is delivered in comparatively small quantities. There has been a large increase in the transportation of refined oil by pipe lines from interior refineries to the seaboard for export; these lines do not deny that they are common carriers, and they are not involved in this controversy. We have here to consider only the transportation of crude oil from the fields of production to refineries. [fol. 1057] This transportation is not an interplant service; it is a transportation business. It is specified as a separate and distinct object of incorporation in the several charters. It is a business primarily and essentially within the term "commerce" as used in the Federal Constitution. It is a business that Congress has the power to segregate from the business of buying and selling and refining. (*New Haven Railroad* v. *Int. Com. Com.*, 200 U. S., 361; *United States* v. *Delaware & Hudson Co.*, 213 U. S., 366, 415.)

Importance of transportation charges to the public.—In the Report of the Commissioner of Corporations on the Transportation of Petroleum, May 2, 1906, the importance of this subject is stated as follows:

> The petroleum industry affords a striking example of the importance of the transportation problem. The cost of transportation is an exceedingly large factor in the cost of oil to the consumer. Consequently, any difference in transportation costs, as between different producers and refiners of oil, has a powerful influence upon their respective positions in competition.
>
> The importance of transportation, with respect to petroleum, grows chiefly out of the fact that petroleum and most of its products are low-priced commodities.

> They are heavy in proportion to their value. Moreover, the value of the raw material, crude petroleum, is a large proportion of the total cost of the finished product, while the cost of refining is comparatively [fol. 1058] small, and a reasonable profit to the refiner is also a comparatively small factor per unit of product. Even an apparently slight difference in transportation rates may, therefore, enable one refiner to sell at a profit while his competitor is losing money (p. 33).
>
> And these differences in freight rates, whether legitimate or illegitimate, may easily make the difference between profit and loss to the refiner of petroleum (p. 34).

As already noted; the cost of the transportation of oil by pipe lines is at most one-fourth the cost of transportation by rail. The producer, the dealer, or the refiner must, therefore, be able to transport oil by pipe lines or leave the field to those who possess this facility. This means monopoly for the refineries controlling pipe lines; monopoly for the Standard Oil Company as conditions existed at the time of the legislation in controversy. The Commerce Court was compelled to say:

> True, the possession of a pipe line enables its owner to transport his oil to the refinery or other market at very small cost compared with any other means of conveyance. The practical result may be, and in most instances doubtless would be, that other producers find it to their interest to sell the output of their wells to the owner of the pipe line, and in this sense it may be said that they are obliged to sell to him.

Method of controlling the price and distribution of crude oil by pipe lines.—At the time of the legislation under con- [fol. 1059] sideration the appellees, excepting the Uncle Sam Oil Company (No. 507), and the Standard Oil Company of Louisiana (No. 483), organized by the Standard in 1909, were owned and absolutely controlled by the Standard Oil Company. The Standard also owned and controlled many other lines. (See list Rec. 482, pp. 73, 74.) The method of doing the business was devised by that company; it was in effect on all lines, and the purpose was to control the oil industry of the United States (*Standard Oil Co. case, supra*). Aside from the "combination,"

which was held by this court to be unlawful under the Anti-Trust Act, the means, and we may say the principal means, by which this monopoly was secured, was through the ownership of the pipe lines *and the practice of buying the oil for the refineries, through the pipe lines, at the wells.* This *practice* is set forth in the sworn answers of the Interstate Commerce Commission, and in the agreement which each producer must sign before a connection will be made between his tank at the well and the receiving tanks of the pipe line. (Rec. No. 506, pp. 15, 16, 17.) By this contract the producer agrees that the oil *shall become the property of the pipe line* "as soon as the same is received into its custody," and, that "The oil received * * * shall be paid for * * * at *the market price paid by the*" pipe line. The prices *allowed to the producers,* referred to in said agreements, *are arbitrarily fixed and posted by the pipe line.* Upon these terms and conditions the pipe line *will take all the oil offered.* No common [fol. 1060] carrier holds itself out, in a greater degree or to a greater extent, to take traffic for transportation, than these pipe lines do—upon the conditions named. Any producer desiring to market his oil to refineries (the only buyers) can do so by signing this monopoly contract. If he refuses to sign this contract he can not reach a refinery, because every other means of transportation is of no avail on account of the excessive cost. The cost by rail to an eastern refinery is usually the same as the monopoly price for the oil at the well. The producers must accept this arbitrary agreement and price for their product or allow the oil to run to waste upon the ground. "Take our price or take nothing" is the imperial edict of the monopoly and the hopeless alternative to the producers.

Through the possession of these pipe lines, therefore, and the contract method of transferring the title at the wells as a condition of transportation, the Standard Oil Company was able to *compel* the signing of the agreements by the well owners. No refiner or dealer could go into the field and buy the oil, as is done for instance by millers and dealers in the grain-producing-territory, for the cost of transportation by rail was too great to permit of such buying. The producer, therefore, must either allow his oil to go to waste or sell it at the price which the Standard Oil Company was willing to give. Taking the situation

as it existed in 1906, when this legislation was enacted, it is absurd to say that these prices were fixed by any *subordinate organization*. The Standard Oil Company [fol. 1061] dominated the situation. These producers were compelled, by the artificial conditions created by the Standard Oil Company, to deliver their oil at the arbitrary price fixed by that company. While the Standard Oil Company, through its pipe line companies, owned a few wells, the production from these wells was small and unimportant. They were simply used to give some semblance of reason to the theory that the pipe line companies were *producers* of oil. So long as they could hold these thousands of producers in the oil fields in subjection, and compel them to deliver their oil at the Standard's prices, the Standard Oil Company had no reason or incentive to bore, and experiment with oil wells. It was safer and cheaper to enslave the producers.

The Standard Oil Company had, by these methods, obtained the title to and control of 85 per cent of the oil produced. It held the field by virtue of the fact that it controlled existing pipe lines and, by its contracts, fixed the price of the entire output of crude oil. To organize any effective competition was practically impossible; in fact no one was interested in doing this except the producers, and they are men of very small means.

Independent refiners.—The ownership of the pipe lines and the monopoly of the crude oil enabled the Standard Oil Company to determine practically the quantity that it would allow the existing independent refineries to consume, and to fix the price of crude oil to them. This [fol. 1062] condition effectually prevented the building of competing refineries.

Monopoly.—Considering the condition existing at the time this legislation was enacted, the following results were inevitable, namely, (1) the Standard Oil Company controlled and arbitrarily fixed the price of crude oil at the wells; (2) no independent refinery in the East could secure crude oil except from the Standard Oil Company; and (3) the quantity accorded to the independent refineries, and the price they must pay for it, were fixed arbitrarily by the Standard Oil Company. With these three "grips" the Standard Oil Company held a complete monopoly of the oil industry by *artificially created* conditions. Considering this situation, created by this combination and con-

spiracy of the Standard Oil Company, the language of the Commerce Court is strangely at variance with the language of this court. In the opinion of the Commerce Court (p. 36), that court said:

> But how does the possession of a private pipe line by one of many oil producers or dealers take from the others any privilege or opportunity which is rightfully theirs or which they are justly entitled to share with the more fortunate owner? Of what right can they be said to be deprived, or in what respect are they subjected to any injury or disability which is illegal?

And on pages 38, 39:

> It is only repeating to say that the private use by petitioners of the pipe lines in question has no relation [fol. 1063] to monopoly, and in no correct sense of the word tends to monopoly, since such use does not exclude others from any privilege which is rightfully theirs and involves only that exclusion which is inseparable from the possession and enjoyment of private property.
>
> It may be that the greater number of oil producers *are virtually compelled* to sell their output to the owners of private pipe lines, because they are unable or unwilling to build pipe lines of their own, or because there are no common-carrier pipe lines to which they have access. * * *

This court, in the Standard Oil Company case, *supra*, said (pp. 76-77):

> The exercise of the power which resulted from that organization fortifies the foregoing conclusions, since the development which came, the acquisition here and there which ensued of every efficient means by which competition could have been asserted, the slow but resistless methods which followed by which means of transportation were absorbed and brought under control, the system of marketing which was adopted by which the country was divided into districts and the trade in each district in oil was turned over to a designated corporation within the combination and all others were excluded, all lead the mind up to a convic-

tion of a purpose and intent which we think is so certain as practically to cause the subject not to be within the domain of reasonable contention.

[fol. 1064] The inference that no attempt to monopolize could have been intended, and that no monopolization resulted from the acts complained of, since it is established that a very small percentage of the crude oil produced was controlled by the combination, is unwarranted. As substantial power over the crude product was the inevitable result of the absolute control which existed over the refined product, the monopolization of the one carried with it the power to control the other, and if the inferences which this situation suggests were developed, which we deem it unnecessary to do, they might well serve to add additional cogency to the presumption of intent to monopolize which we have found arises from the unquestioned proof on other subjects.

Public markets.—Referring again to the contract signed by the producers by which they dispose of their oil to the Standard pipe lines, it will be observed that the pipe line companies *measure and grade the oil in their own way and by their own agents.* They take all the oil offered. Considering in this connection the fact that practically all of the oil produced is measured and gauged by, and sold to, the pipe lines, it follows that these are the public markets *and the only public markets* for this enormous domestic product. Through these practices, carried on by the Standard Oil Company and these pipe lines, markets were established and maintained in every field of production and presided over by this monopoly. This court, in *W. W. Cargill Co.* [fol. 1065] v. *Minnesota ex rel. Railroad & W. Com.* (180 U. S., 452, 462-465), speaking through Mr. Justice Harlan, said:

> The defendant company during the period mentioned never received into, or shipped from, or handled or deposited or in any way stored in the warehouse any grain in which any other person or persons had any property, title, right, or interest; * * *. But the warehouse was used, occupied, and operated by the defendant solely for the purpose of receiving, handling, and shipping its own grain in its private capacity as grain owner and merchant.

> * * * It was conceded on the argument, and is fairly to be inferred from the findings and stipulation of facts, that the grain is purchased, weighed, graded, and delivered at the warehouse, and that defendant, with its own scales and appliances, weighs and grades the grain. Under these circumstances the warehouse is a sort of public market place, where the farmers come with their grain for the purpose of selling the same, and where the purchaser, a party in interest, acts as market-master, weighmaster, inspector, and grader of the grain. *Surely such a business is of a public character, and is sufficiently affected with a public interest to warrant a very considerable amount of regulation of it by the State.*

Right of way.—As already noted, pipe lines for the transportation of oil are of recent origin. When the construction of these lines began, no State in the Union had any statute [fol. 1066] providing for the organization of such lines or for the exercise of the power of eminent domain by them. The statutes upon these subjects which now exist in many States are of comparatively recent origin. In the beginning the pipe lines were compelled to acquire right of way by private contract.

The exercise of the power of eminent domain is not essential to *create* a "public interest" in or right to regulate a business of transportation. The possession of this power is not essential to make a corporation *quasi public* in character. Express companies, sleeping car companies, electric light and power companies, telegraph companies, and others are *quasi public* corporations, but do not possess the power of eminent domain.

Franchises.—To construct pipe lines it was and is essential that public franchises be accorded them. These pipe lines cross hundreds of public highways and streets. A contract for such a right "from the abutting owners" can not deprive the State or municipality of its superior sovereign right over the highway or street. The State or municipality can compel the changing or the removal of these pipes if they are regarded dangerous to the public. The construction and maintenance of these pipe lines upon these highways and streets is by public consent, and such consent is absolutely essential to such construction. These lines run

many hundred miles through a thickly settled portion of the country and necessarily cross or run upon hundreds of roads and streets. These privileges are not granted to a purely [fol. 1067] private business. This is not therefore a private business that can be carried on independently of governmental franchises.

These pipe lines cross and in some instances run upon rights of way of railroad companies whose rights of way have been secured under public authority. The Prairie Oil & Gas Company runs 300 miles upon the right of way of the Atchison, Topeka & Santa Fe Railway. Some of the other appellees enjoy similar privileges. These privileges, whatever the contract may be with the railroad company, are subject to the same obligations and burdens, as far as the public is concerned, that the right of way of the railroad company is subject to. These pipe lines are no less public because they operate upon these rights of way by contract with the railroad company than are telegraph, express, or sleeping car companies. Whatever rights inhere in the public in one case exist as to the other.

Some of these pipe lines run upon parts of the public domain. The privileges were granted by the United States Government, acting through the Interior Department, under regulations provided by law. By statute Congress provide for the granting of rights of way to pipe lines through Indian and public lands by the Secretary of the Interior. (33 Stat. L., 65.)

A "franchise" is defined to be "A special privilege emanating from the Government and vested in an individual or a body politic and corporate, *which is not possessed by* [fol. 1068] *citizens generally.*" Using this general definition, it is clear that these rights over public highways, streets, railway rights of way, and the public domain are franchises within the meaning of the law and were and are granted to these pipe lines because of the public interest in the transportation which these lines are organized to carry on.

Eminent domain.—In nearly all the States interested in the production and transportation of oil statutes have been passed conferring upon pipe-line companies the power of eminent domain. Any one of these companies may now exercise that power in its State. This power is only granted to *quasi-public* corporations; not for the purpose of making the corporations *quasi public*, but in recognition of the fact

that they are performing a service in which the public is interested and to enable them, by reason of the public interest, to carry on successfully their business. This extraordinary power is called into action only in cases where the companies can not agree with the owners of property needed in the construction of transportation lines. In most cases there is agreement as there was in these cases. The charter of each of these pipe lines, in naming the purposes for which the corporation is organized, states, in a definite form, *the transportation of oil*. The public is interested in this transportation business, and therefore has aided these companies by granting to them the usual privileges accorded to transportation companies.

[fol. 1069] Particular Facts Regarding Each of the Appellees

No. 481

The Ohio Oil Company is organized under the laws of the State of Ohio, with a capital stock of $15,000,000, of which $14,999,850 was owned by the Standard Oil Company; it owns and operates, under lease and otherwise, a trunk line from the Lima-Indiana field in Indiana, to Centerbridge, in the State of Pennsylvania; it acquired its right of way by contract over lands traversed, and crosses public highways by municipal grants or permission; it purchases crude oil and transports the same through its pipe lines, delivering the oil to the Standard Oil Company of New Jersey at Centerbridge. The price of the crude oil at the wells is arbitrarily fixed by the pipe-line company; its purchases, sales, and deliveries to the Standard Oil Company are conducted substantially in the same manner as are the transactions of the Prairie Oil & Gas Company and other Standard Oil pipe lines. Its charter expressly authorizes it to *transport* oil.

No. 482

The Standard Oil Company was incorporated under the laws of the State of New Jersey August 5, 1882. The facts concerning the capitalization and holdings of this company, in 1906 and subsequently, were judicially determined in *Standard Oil Company* v. *United States* (221 U. S., 1). The bill in that case was filed November 15, 1906, and shows the conditions in the oil industry existing at that time. The

[fol. 1070] Standard Oil Company was originally a holding company and acquired the majority, and in many cases all, of the stocks of "various corporations engaged in purchasing, transporting, refining, shipping, and selling oil into and among the various States and Territories of the United States and the District of Columbia, and with foreign nations"; in January, 1899, the charter was amended so that the business and objects of incorporation included, among other things, "transporting goods and merchandise by land or water in any manner." This company succeeded to all of the holdings of the Standard Oil Company of Ohio, which company was, by the Supreme Court of Ohio, on March 2, 1892, adjudged to be an unlawful monopoly in restraint of trade. Among the forty corporations whose stocks, or a majority thereof, were transferred to the Standard Oil Company was the total stock of the National Transit Company; this stock was held by the Standard Oil Company at the time of the entry of the decree in the Standard Oil Company case, *supra*. (Rec. No. 482, p. 73.)

The petition herein states, and the decree in the Standard Oil case shows, that the Standard Oil Company also had transferred to it certain refineries, or the stocks thereof, formerly owned by the Standard Oil Company of Ohio, located at Bayonne, N. J., Baltimore, Md., and Jersey City, N. J. The National Transit Company was organized under a special charter granted by the State of Pensylvania "to take over such of the pipe lines belonging to or held for the [fol. 1071] Standard Oil Company of Ohio or its stockholders as might be transferred to it; that under the terms of its charter the National Transit Company was then, and has always been, a common carrier within the State of Pennsylvania." (Rec. No. 482, p. 3.)

The Transit Company acquired, in 1882, and operated until May 1, 1894, two main trunk pipe lines for the transportation of crude oil to the Standard Oil Company's refineries aforesaid; one line extended from the Appalachian field through the State of Pennsylvania to Philadelphia, with a branch line extending from the main line to Baltimore, in the State of Maryland, and another branch line extending from its said main line to Bayonne, in the State of New Jersey. The second trunk line extended from the Appalachian field through the State of New York and the State of New Jersey to Bayonne. In 1890 the State of New York passed an act providing for the incorporation of pipe-

line companies, making them common carriers. About May 1, 1894, the Standard Oil Company organized the New York Transit Company under the laws of the State of New York, and caused the said trunk line, extending through New York to Bayonne, New Jersey, to be conveyed by its National Transit Company to the newly organized New York Transit Company. The entire stock of the New York Transit Company was issued to and held by the Standard Oil Company. (Rec. No. 482, p. 73.) After May 1, 1894, the National [fol. 1072] Transit Company and the New York Transit Company, both common carriers by virtue of their charters and the laws of the States under which they were organized, owned as aforesaid, and operated the two trunk lines and branches for the purpose of supplying the refineries of the Standard Oil Company at the points named with crude oil.

Pending the legislation by Congress in controversy, requiring pipe lines to be common carriers and to file their tariffs with the Interstate Commerce Commission, "about November 3, 1905," the petition herein alleges, "the boards of directors of the National Transit Company and the New York Transit Company, respectively, passed resolutions authorizing the sale to petitioner (Standard Oil Company) of all their said pipe line properties in New Jersey and Maryland, and that thereafter, on or about July 17, 1906, deeds conveying said properties were duly executed and delivered to petitioner, with the exception of the deeds for certain small pieces of land which were overlooked at the time of the original transfer, and were executed and delivered to the petitioner in 1908 on the discovery of the oversight; and that the operation of said properties was taken over by your petitioner in August, 1906." (Petition, Rec., No. 482, p. 4, paragraph 8.) At the time this transfer was made the States of New Jersey and Maryland did not require pipe line companies to be common carriers. The eastern ends or parts of the trunk lines above described, conveyed to the Standard Oil Company, extend (1) from [fol. 1073] Unionville, on or near the boundary line between New York and New Jersey to Bayonne, N. J., and Brooklyn, N. Y.; (2) from Centerbridge, at or near the boundary line between the States of Pennsylvania and New Jersey, to Bayonne and Baywater; and (3) from Fawn Grove, at or near the boundary line between Pennsylvania and Maryland to Baltimore; all these lines connecting with refineries

and storage tanks of the Standard Oil Company. (See map.)

There are no oil wells producing crude oil at either Unionville, Centerbridge, or Fawn Grove, nor are there any refineries or consumers of crude oil at said points or either of them. Although the National Transit Company and the New York Transit Company were common carriers by virtue of their organization by the laws of the States under which they were organized, yet by virtue of the control exercised by the Standard Oil Company over these companies no oil was shipped through them except for its refineries at Bayonne, Philadelphia, and Baltimore or for export by the Standard Oil Company. The conveyance of these ends of the trunk lines to the Standard Oil Company was for the purpose of placing the title to said pieces in a corporation not required to be a common carrier by the law of the State in which it was incorporated, and to avoid, if possible, the effect of the act of Congress in controversy requiring carriers of oil by pipe lines to file tariffs with the Interstate Commerce Commission, and also to limit the transportation of oil through the trunk lines of the National [fol. 1074] Transit Company and the New York Transit Company to oil carried for the Standard Oil Company. By controlling the eastern ends of these trunk lines no refinery situated upon the seaboard could take advantage of the requirement that the National Transit Company and the New York Transit Company should be common carriers, and secure crude oil from the Appalachian field, as the Standard Oil Company claimed to be a private carrier carrying only its own product and refused to receive oil at Unionville, Centerbridge, or Fawn Grove for other refiners. There was in fact no change of *actual* ownership of these pieces of pipe lines. The two transit companies were wholly owned and controlled by the Standard Oil Company. The Standard owned and operated these pipe lines just as completely before the transfer to it as it did afterwards. Practically there was no difference in the ownership, and there was not, and could not be, any object in making the transfer other than an attempt to circumvent the pending legislation by Congress.

The Standard Oil Company receives crude oil transported to and for it from the western fields through the system of pipe lines shown upon the map referred to. It refuses to receive crude oil not transferred to it under the terms and

conditions above set forth. By means of its pipe lines and those controlled by it, particularly as set forth in this appellant's answer (Rec. No. 482, p. 61), it held, in 1906, a practical monopoly of the oil production and trade of the United States.

[fol. 1075] No. 483

The Standard Oil Company of Louisiana was organized under the laws of Louisiana in April, 1909, and commenced business after the commencement of the suit to dissolve the Standard Oil Company; its charter provides that it may *transport* oil.

It owns and operates a refinery at Baton Rouge, in the State of Louisiana, and a trunk pipe line extending from the northern State line to Baton Rouge. It has gathering lines in the Caddo field; it purchases about one-third of its oil from the Mid-Continent field, which is delivered to it by the Prairie Oil & Gas Company, the transportation being a through transportation from the Mid-Continent field to its refinery; the last-named company takes the title to the oil at the wells and transfers it to the Standard at the point of connection. No oil is transported through either line that is not purchased for the refinery at Baton Rouge. Its business is conducted upon precisely the same lines and bases as the other Standard Oil Companies.

No. 506

The Prairie Oil & Gas Company is organized under the laws of the State of Kansas, and it is authorized to explore for, mine, produce, purchase, store, sell, and *transport* petroleum oil.

By a decree of the Supreme Court of the State of Kansas (Exhibit B to answer I. C. C. Rec. 506, pp. 22 to 25) it is enjoined from manufacturing, storing, selling, or market-[fol. 1076] ing refined petroleum oil, and from "*making or carrying out any arrangements, contracts, agreements, understandings, trusts, or combinations, with a view or which tend to advance rates or control the price or the cost to the producer or to the consumer or to prevent the full and free competition in the importation, transportation, manufacture, or sale of crude petroleum.*" Its present authorized capital is $20,000,000, of which the National Transit Company held $17,797,400 (increased from $10,000,000,

Dec. 11, 1907); the Standard Oil Company owned and held the stock of the Transit Company at the time of the dissolution of the Standard Oil Company. (See copy of the supplemental decree dissolving the Standard Oil Company of New Jersey, Exhibit A to I. C. C. answer Rec. 482, pp. 71 to 77.) This stock was distributed, under the decree, to the stockholders of the Standard Oil Company.

The Prairie Oil & Gas Company owns and operates pipe lines consisting (*a*) of gathering lines in the Mid-Continent field, in the States of Kansas and Oklahoma, (*b*) a trunk line from the Mid-Continent field to Whiting, in the State of Indiana, where it connects with the Indiana pipe line, and (*c*) a trunk line in the State of Arkansas, connecting the Oklahoma pipe line with the pipe line of the Standard Oil Company of Louisiana. (All particularly shown upon the map, Exhibit C to this appellant's answer.) It has about 860 miles of trunk line, its total mileage approximating 3,000 miles (single pipe). The right of way for its trunk [fol. 1077] lines was secured by contract over all property which it traverses; but these modifying facts are stated in the answer:

(1) About 300 miles of the trunk line to Whiting is on the right of way of the Atchison, Topeka & Santa Fe Railway; this right of way was acquired by contract with the railroad Company and, it is claimed, with the abutting owners of the fee.

(2) Its right of way through the Indian lands in Oklahoma was secured by public grant upon application to the Interior Department, in accordance with an act of Congress approved March 11, 1904 (33 Stat. L., 65), and subject to the regulations of the department.

(3) By public grants or permission from State and municipal authorities, it crosses many public highways and streets.

This company stored and transported through its pipe lines in 1910 about 80 per cent of the total production of crude oil in the Mid-Continent field; it offers to connect its line and take oil from any and all producers in that field upon the condition (1) that the title to the oil vest in the pipe-line company immediately upon its being gauged and delivered into its gathering pipes, and (2) that the producer accept the arbitrary price fixed and posted at the

wells by the pipe-line company. It measures and gauges the oil at the wells. Through its pipe lines and connecting pipe lines oil is purchased for and delivered to the refineries owned, operated, or controlled by the Standard Oil Company of New Jersey. The price paid by the refineries for the crude oil so delivered is fixed by the refinery, and [fol. 1078] includes the cost of transportation.

The fields of production, refineries, and pipe lines are particularly shown upon the map referred to. This company has, in its storage tanks and pipe lines, accumulated oil amounting to 40,000,000 barrels, and has standing agreements for future delivery to the refineries named amounting to 100,000 barrels per day. It produces from its own wells about 11,557 barrels per day, and has outstanding obligations to purchase from well owners about 79,000 barrels per day.

No. 507

The Uncle Sam Oil Company was incorporated under the laws of the Territory of Arizona for the purpose of producing, *transporting*, refining, and marketing oil. It is not one of the Standard Oil group. It operates oil wells in the Osage Indian Reservation in the State of Oklahoma, and a refinery at Cherryvale, in the State of Kansas. It owns and operates a pipe line, with storage tanks, from its wells in the reservation in the State of Oklahoma to its refineries in Cherryvale, Kansas. Through the agency of a selling corporation, the capital stock of which it owns, it ships its refined product in tank cars, owned by it, from its refinery at Cherryvale to stations owned by it in the State of Missouri. Its right of way for its pipe line was secured by contract over the lands traversed by it, and by permission of the Interior Department over Indian [fol. 1079] lands; it crosses public highways by grant or permission of the public. Its charter permits it to *transport* oil as a common carrier. This company is constructing new lines to other points which will soon be open for traffic.

No. 508

The Tide-Water Pipe Company, Limited, is a partnership created under the laws of the State of Pennsylvania. It has a capital stock of $625,000, for which certificates are issued only to members. It owns and operates a trunk pipe line from the Appalachian field on the western line of the

State of Pennsylvania to Bayonne, in the State of New Jersey. The company also owns and operates branches from the Allegheny and New York field, and branches through McKean County, Pa., and also a line extending from Stoy, Crawford County, Ill., through the States of Illinois, Indiana, Ohio, and Pennsylvania. This pipe line crosses, at the Pennsylvania State line, the Buckeye pipe line. It purchases oil in the Appalachian field, and receives oil from connecting lines from other fields, which it transports to the Tide-Water Oil Company refinery at Bayonne, New Jersey. This refining company has an outstanding capital of $24,000,000.

This company refuses to take any oil into its pipes for transportation except upon condition that the title is transferred to the company at the company's posted prices. The Standard Oil Company of New Jersey has an interest of 31 per cent in said partnership and is represented by H. C. [fol. 1080] Folger, jr., and holds the same proportion of the stock of the refining company.

Conclusions of Fact

The general and particular facts above set forth show:

(1) That all of the appellee companies are organized and by their charters are authorized, to construct and operate pipe lines and transport oil.

(2) That each of the appellee companies is engaged in the transportation of oil "among the several States."

(3) That the public, through the United States, State, and municipal governments, recognizing the public interest in this business, has granted valuable franchises to each of these companies.

(4) That said appellee companies have established and maintain public markets for the sale of crude oil.

(5) That the oil produced in the United States and transported by these companies is of the value of $150,000,000 and the public is interested in this transportation.

(6) That this transportation, in connection with the methods by which it is carried on, vitally affects thousands of producers of crude oil in the United States, and arbitrarily fixes the price of crude oil.

(7) That this transportation and these practices affect and restrict independent refineries in the United States, and enable the favored refiners to arbitrarily fix the price of refined oil.

(8) That this transportation in connection with these practices affects millions of consumers in the United States [fol. 1081] and tends to, and does, create a monopoly in petroleum.

Therefore, this business *is affected with a public interest;* it is *interstate commerce;* and we shall now contend that Congress has complete Constitutional power to regulate it in the manner provided in the act of 1906.

Questions of Law

I

Is the business of the appellees affected with a public interest to an extent that the business ceases to be *juris privati* only?

It is not necessary that a person carrying on a business "hold himself out" to serve the public in order to charge the business with a public interest. The business in its beginning may be purely private, but so develop, through design or by evolution, that the public must avail itself of the advantages furnished. It may become a virtual monopoly. In either case it ceases to be *juris privati* only and becomes "affected with a public interest," subject to regulation.

When one becomes a member of society, he necessarily parts with some rights or privileges which, as an individual not affected by his relations to others, he might retain.

"A body politic," as aptly defined in the preamble of the constitution of Massachusetts, "is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all [fol. 1082] shall be governed by certain laws for the common good." This does not confer power upon the whole people to control rights which are purely and exclusively private, Thorpe v. R. R. Co., 27 Vt. 143, but it does authorize the establishment of laws requir-

ing each citizen to so conduct himself and so use his own property as not unnecessarily to injure another.

* * * * * * *

Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. To this day statutes are to be found in many of the States upon some or all of these subjects; and we think it has never yet been successfully contended that such legislation came within any of the constitutional prohibitions against interference with private property.

* * * * * * *

Looking, then, to the common law, from whence came the right which the Constitution protects, we find that when private property is "affected with a public interest it ceases to be *juris privati* only." This was said by *Lord Chief Justice* Hale more than two hundred years ago in his treatise *De Portibus Maris*, 1 Harg. [fol. 1083] L. Tr., 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest *when used in a manner to make it of public consequence and affect the community at large*. When, therefore, one devotes his property to a use in which the public has an interest, he, *in effect*, grants to the public an interest in that use and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. *He may withdraw his grant by discontinuing the use*, but so long as he maintains the use he must submit to the control.

Lord Chief Justice Hale, in his treatise *De Portibus Maris*, distinguishing between a public and a private wharf, the former of which can be regulated, says:

> If the King or subject have a public wharf, unto which all persons that come to that port must come and unlade or lade their goods as for the purpose, because they are the wharfs only licensed by the Queen, * * * *or because there is no other wharf in that port, as it may fall out where a port is newly erected*; * * * the wharf and crane and other conveniences are effected with a public interest, and they cease to be *juris privati* only; as if a man set out a street in a new building on his own land, it is now no longer bare private interest, but is affected by a public interest.

Lord Ellenborough, in *Allnut* v. *Inglis*, 12 East, 527, 539 (decided in 1810), referring to the language of Lord Hale, said:

> [fol. 1084] *It is enough* that there exists in the place and for the commodity in question a *virtual monopoly* of the warehousing for this purpose, on which the principle of law attaches, as laid down by Lord Hale in the passage referred to (that from *De Portibus Maris* already quoted), which includes the good sense as well as the law of the subject.

And in the same case Le Blanc, *J.*, said (p. 541):

> Then *admitting these warehouses to be private property*, and that the company might discontinue this application of them, or that they might have made what terms they pleased *in the first instance, yet having, as they now have, this monopoly*, the question is whether the warehouses be not private property clothed with a public right, and if so, the principle of law attaches upon them. The privilege, then, of bonding these wines being at present confined by the act of Parliament to the company's warehouses, it is not the privilege of the public, and shall not that which is for the good of the public attach on the monopoly, that they shall not be bound to pay an arbitrary but a reasonable rent? * * * But though this be private property, yet the principle laid down by Lord Hale attaches upon it, that when private property is affected with a

public interest it ceases to be *juris priviti* only, and in case of its dedication to such a purpose as this, the owners can not take arbitrary and excessive duties, but the duties must be reasonable.

The foregoing statements of the law are set forth in Munn *v.* People of Illinois (94 U. S., 113, 154), as "the [fol. 1085] principles upon which this power of regulation rests."

In *Munn* v. *Illinois, supra,* the constitution of Illinois, adopted in 1870, provided, in article 13, section 1, that "All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are *declared to be public warehouses.*"

An act of the Legislature of Illinois, approved April 25, 1871-2 (Pub. Laws of Ill., p. 762), divided public warehouses into three classes, prescribed the taking of a license, the giving of a bond, and fixed the maximum charge for warehouses belonging to class A, for storing and handling grain, including the cost of receiving and delivering, and imposed a fine on conviction for not taking a license, or not giving the bond.

Munn and Scott were indicted, convicted and fined for not taking out the license, and not giving the bond, and for charging rates for storing and handling grain higher than those established by the act. They were the managers and lessees of an elevator constructed and operated "by private individuals, who have embarked their capital and devoted their industry to such business as *a private pursuit*"; the elevators were erected at the points where transportation by water on the lakes meets the rail transportation for the East; these elevators elevated the grain from the ships into the elevator, mixed and graded the grain and delivered it into the cars.

This court, speaking through Mr. Chief Justice Waite, said:

> [fol. 1086] This mode of conducting the business was inaugurated more than twenty years ago and has grown to immense proportions. The railways have found it impracticable to own such elevators, and public policy forbids the transaction of such business by the carrier; the ownership has therefore been by private individuals who have embarked their capital and

devoted their industry to such business as a private pursuit.

In this connection it must also be borne in mind that, although in 1874 there were in Chicago fourteen warehouses adapted to this particular business and owned by about thirty persons, nine business firms controlled them and that the prices charged and received for storage were such "as have been from year to year agreed upon and established by the different elevators or warehouses in the city of Chicago, and which rates have been annually published in one or more newspapers printed in said city, in the month of January in each year, as the established rates for the year then next ensuing such publication." Thus it is apparent that all the elevating facilities through which these vast productions "of seven or eight great States of the West" must pass on the way "to four or five of the States on the seashore" *may* be a "*virtual*" *monopoly.*

Under such circumstances it is difficult to see why, if the common carrier, or the miller, or the ferryman, or the innkeeper, or the wharfinger, or the baker, or the cartman, or the hackney coachman pursues a public employment and exercises "a sort of public office," [fol. 1087] these plaintiffs in error do not. • • • Certainly if any business can be clothed "with a public interest and cease to be *juris privati only*" this has been. It may not be made so by the operation of the constitution of Illinois or this statute, *but it is by the facts.*

Referring to the provisions of the constitution of Illinois and the legislation thereunder, the court further said:

This indicates very clearly that during the twenty years in which this peculiar business had been assuming its present "immense proportions," something had occurred which led the whole body of the people to suppose that remedies such as are usually employed to prevent abuses by virtual monopolies might not be inappropriate here. For our purposes we must assume that, if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed.

For us the question is one of power, not of expediency. If no state of circumstances could exist to justify such a statute, then we may declare this one void, because in excess of the legislative power of the State. But if it could, we must presume it did. Of the propriety of legislative interference within the scope of legislative power, the legislature is the exclusive judge.

Neither is it a matter of any moment that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin, that its growth has been rapid, and that it is already of great importance. And it must also be conceded [fol. 1088] that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long known and well established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress.

* * * * * * *

We know that this is a power which may be abused, but that is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, not to the courts.

* * * * * * *

It matters not in this case that these plaintiffs in error had built their warehouses and established their business *before the regulations complained of were adopted.* What they did was, from the beginning, subject to the power of the body politic to require them to conform to such regulations as might be established by the proper authorities for the common good.

* * * * * * *

It was very properly said in the case of the *State Tax on R. Gross Receipts,* 15 Wall., 293 (82 U. S. XXI, 167), that "It is not everything that affects commerce that amounts to a regulation of it within the meaning of the Constitution." The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the State of Illi-

nois. They are used as instruments by those engaged in State as well as those engaged in interstate com- [fol. 1089] merce, but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern, and certainly until Congress acts in reference to their interstate relations the State may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction.

The doctrine laid down in *Munn* v. *Illinois* has been followed by this court and the supreme courts of many States of the Union. It came up for reexamination and review by this court in *Budd* v. *State of New York*, 143 U. S. 517, 552. In the opinion in the Budd case, many extracts from the opinion in the Munn case are set forth, many State cases are reviewed which had followed the Munn case, and the doctrine in the Munn case is reaffirmed.

In *Budd* v. *State of New York, supra*, an act of the State of New York was under consideration. The act provided that—

> SECTION 1. The maximum charge for elevating, receiving, weighing, and discharging grain by means of floating and stationary elevators and warehouses in this State shall not exceed the following rates, namely:

Then follows certain rates, concluding as follows:

> and canal boats, shall only be required to pay the actual cost of trimming or shoveling to the leg of the [fol. 1090] elevator when unloading, and trimming cargo when loading.

The act provided fines and penalties for violation of the law.

Budd was indicted for a violation of the act, he being the manager of the Wells Elevator in Buffalo, which was an elevator and warehouse for receiving and discharging grain in the city of Buffalo.

The defense was that the services rendered by Budd, for which the statute assumed to fix the price, were not public in their nature; that neither the persons rendering them nor the elevator in question had received any privilege from the legislature, and that such elevator was not a public warehouse and received no license.

This court, speaking through Mr. Justice Blatchford, said:

> We must regard the principle maintained in *Munn* v. *Illinois* as firmly established; and we think it covers the present cases, in respect to the charge for elevating, receiving, weighing, and discharging the grain, as well as in respect to the charge for trimming and shoveling to the leg of the elevator when loading, and trimming the cargo when loaded.
>
> * * * * * * *
>
> We are of opinion that the act of the legislature of New York is not contrary to the 14th amendment to the Constitution of the United States and does not deprive the citizen of his property without due process of law; that the act, in fixing the maximum charges [fol. 1091] which it specifies, is not unconstitutional, nor is it so in limiting the charge for shoveling to the actual cost thereof; and that it is a proper exercise of the police power of the State.
>
> On the testimony in the cases before us, the business of elevating grain is a business charged with a public interest, and those who carry it on occupy a relation to the community *analogous to that of common carriers.*
>
> * * * * * * *
>
> In the actual state of the business the passage of the grain to the city of New York and other places on the seaboard would, without the use of elevators, be practically impossible.
>
> * * * * * * *
>
> The charges made by the elevator influence the price of grain at the point of destination on the seaboard, and that influence extends to the prices of grain at the places abroad to which it goes. The elevator is devoted

by its owner, who engaged in the business, to a use in which the public has an interest, and he must submit to be controlled by public legislation for the common good.

In *Sinking Fund Cases*, 99 U. S., 700, 747, Mr. Justice Bradley, who was one of the justices who concurred in the opinion of the court in *Munn* v. *Illinois*, speaking of that case (dissenting opinion), said:

> The inquiry there was as to the extent of the police power in cases where the public interest is affected; and we held that when an employment or business becomes a matter of such public interest and importance [fol. 1092] as to create a common charge or burden upon the citizens; in other words, *when it becomes a practical monopoly, to which the citizen is compelled to resort* and by means of which a tribute can be exacted from the community, it is subject to regulation by the legislative power.

In *Spring Valley Water Works* v. *Schottler*, 110 U. S. 347, 354, a case where a *private* water company was required to furnish water at rates fixed by a statute, this court, speaking through Mr. Chief Justice Waite, said:

> That it is within the power of the Government to regulate the prices at which water shall be sold by one who enjoys a *virtual monopoly* of the sale we do not doubt. That question is settled by what was decided on full consideration in *Munn* v. *Illinois*, 94 U. S. 113. As we said in that case, such regulations *do not deprive a person of his property without due process of law*.

In *Dow* v. *Beidelman*, 125 U. S. 680, 686, this court, speaking through Mr. Justice Gray, said:

> In *Munn* v. *Illinois*, * * * after affirming the doctrine that by the common law carriers or other persons exercising a public employment could not charge more than a reasonable compensation for their services, and that it is within the power of the legislature "to declare what shall be a reasonable compensation for such services, or, perhaps more properly speaking, to fix a maximum beyond which any charge made would be unreasonable," the Chief Justice said: "To limit the rate of

[fol. 1093] charges for services rendered in public employment, or for the use of property in which the public has an interest, only changes a regulation which existed before. It establishes no new principle in the law, but only gave a new effect to an old one."

The Supreme Court of Ohio said:

> Where the owner of property devotes it to a use in which the public have an interest, he *in effect* grants to the public an interest in such use, and must, *to the extent of that interest*, submit to be controlled by the public, for the common good, so long as he maintains the use.
>
> (*State* v. *Columbus G-L. & C. Co.*, 34 Ohio State, 572-582.)

The legislature may fix maximum charges for services in which the public has an interest, even when such persons have derived no special privileges from the State. (*Ruggles* v. *People*, 91 Illinois, 256-262.)

In Alabama, a statute declaring it unlawful within certain counties, to transport or move, after sunset and before sunrise of the succe-ding day, any cotton in the seed, but permitting the owner or purchaser to remove it from the field to a place of storage, was not unconstitutional. It was claimed that the statute was a despotic interference with the rights of private property, and its practical effect a deprivation of ownership without due process of law. The court said that the statute sought only to regulate and control the transportation of cotton in one particular condition [fol. 1094] of it, and was a mere police regulation to which there was no constitutional objection; "that the object of the statute was to regulate traffic in the staple agricultural product of the State, so as to *prevent a prevalent evil*, which, in the opinion of the lawmaking power, might do much to demoralize agricultural labor and to destroy the legitimate profits of agricultural pursuits, to the public detriment, at least within the specified territory." (*Davis* v. *State*, 68 Ala. 58.)

Nothing is better established than the power of the legislature to make what are called "police regulations," declaring in what manner property shall be used and enjoyed and business carried on, with a view to the good order and

benefit of the community, even though they may interfere to some extent with the full enjoyment of private property, and although no compensation is given to a person so inconvenienced. (*Sawyer* v. *Davis*, 136 Mass. 239.)

In a telephone case it was held that when corporations or persons assumed and undertook to supply a public demand made necessary by the requirements of the commerce of the country, such as a public telephone, they were subject to regulation. (*Webster Telephone Case*, 17 Neb. 126. (See also *Hockett* v. *State*, 105 Ind., 250, 258.) *Chesapeake & P. Teleph. Co.* v. *B. & O. Teleg. Co.*, 66 Md. 399, 414.)

A telephone company "not possessed of any special privileges under the statutes of the state" and operating under

> no law giving it a monopoly of the business in the terri- [fol. 1095] tory covered by its wires, yet it must be apparent to all that the mere fact of this territory being covered by the "plant" of the respondent, from the very nature and character of its business, gives it a monopoly of the business which it transacts. No two companies will try to cover the same territory. The demands of the commerce of the present day make the telephone a necessity.
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> * * * * * * *
>
> "That the telephone, by the necessities of commerce and public use, has become a public servant, a factor in the commerce of the nation, and of a great portion of the civilized world, can not be questioned. * * * It has assumed the responsibilities of a common carrier of news. It has and must be held to have taken its place by the side of the telegraph as such common carrier. * * * It is affected with a public interest, it must supply all alike, who are alike situated, and not discriminate in favor of or against any. *State* v. *Nebraska Telephone Co.*, 22 N. W. Rep., 237.

In a controversy between proprietors of tobacco warehouses in the city of Louisville and large dealers in tobacco, it was held that—

> Such warehouses have been always regulated by law for the benefit of the producer, as well as those who are the proprietors of these warehouses, and the latter have

assumed an obligation to the public that exists so long as they continue public warehousemen. They have assumed a *quasi* public character under the protection [fol. 1096] of the law, and will not be allowed to exercise all the privileges that have heretofore belonged to warehousemen, and evade all the duties and responsibilities of their position by the passage of a resolution disclaiming that they are operating their houses in the capacity of warehousemen, but as commission merchants.

They pursue the same business, without any change as to the manner of selling or of conducting their warehouses, claiming only the exercise of a private right, and an entire exemption from the discharge of a public duty.

* * * * * * *

While the warehouse is the private property of the owner it has been devoted to a public use and is controlled and regulated in the conduct of its business for the protection of this great interest. (*Nash* v. *Page*, 80 Ky., 539; 44 Am. Rep., 490.)

In a case involving the right of the Associated Press to discriminate between newspapers, the Supreme Court of Illinois held:

Where one is the owner of property which is devoted to a use in which the public has an interest, he, in effect, grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public for the common good, as long as such use is maintained. The manner in which it is devoted to a use in which the public has an interest may be very diverse, and the public interest in such use may be of a widely variant character; but where the use is one in [fol. 1097] which the public in interested, or has an interest, public control is necessary for the common good.

* * * * * * *

Appellee would be powerful in the creation of a monopoly in its favor, and could dictate the character of news it would furnish, and could prejudice the interests of the public. Such a power was never contemplated

> in its creation and is hostile to public interests. * * * Its tendency, therefore, is to create a monopoly in its own favor, and to prevent its members from procuring news from others engaged in the same character of work, and such provision is illegal and void. (*Inter-Ocean Publishing Co.* v. *Associated Press*, 184 Ill. 438; 48 L. R. A. 568.)

The Board of Trade of the City of Chicago has for its objects the maintenance of a commercial exchange; securing uniformity in the customs and usages of merchants; acquiring and disseminating valuable commercial and economical information, etc. The growth of the association made it of great local and national importance as a trade center. The Western Union Telegraph Co. occupied an office in the exchange. The board by a rule undertook to control the market reports sent out with a view to limiting the information to correspondents approved by the board. A correspondent of the telegraph company, being threatened with having his service cut off, filed a bill for an injunction.

The contention of the board of trade was that it is a strictly private corporation; that the market news and statistics collected and compiled are private property of the [fol. 1098] association which it had the legal right to control, etc. The Supreme Court of Illinois held that:

> The board of trade is a private corporation, and it was incorporated for the purpose of affording facilities to its members in doing business with each other. In their transactions upon the floors of the exchange they deal as principals with each other, but in respect to the outside world they are brokers and commission merchants for the producers, consumers, shippers and merchants whom they represent. * * * it has become of vast commercial influence and fixes the market values of grain and agricultural products for a large territory, and the fluctuations in prices upon its floors powerfully affect the market prices of the necessaries of life throughout the country and the world.
>
> * * * * * * *
>
> In this way the business of the country in buying and selling agricultural products has been brought under the control of the market values for such products

as fixed and determined on the board of trade; and the business of dealing in such products has been brought to conform to the method of receiving instantaneous and continuous market reports inaugurated and for years persisted in by the board of trade and the telegraph companies.

This market news is a species of property; * * * it may be it would have been strictly private property held in trust by the board for the use and benefit of such members and wholly free from any public interest [fol. 1099] therein. But the board did not so exercise its franchises and so conduct its business, but admitted the telegraph companies to the floor of its exchange and permitted and encouraged them from day to day and year after year to gather these statistics of the dealings on the board and telegraph them immediately as they were made, throughout the land, * * * and all persons dealing in such products could not without the knowledge and benefit of these immediate quotations intelligently and safely so deal.

The facts that the board of trade is a private corporation and that the dealings between its members are private business, such as is transacted between dry goods, grocery and commission merchants, and that the statistics of these dealings collected as we have stated are private property, are not conclusive that such statistics are not charged with a public interest and that there is no duty due the public in respect thereto.

* * * * * * *

Assuming that these market quotations and reports are property, and the private property of the board of trade, yet if they have been so used by the board and by the telegraph companies with the knowledge and consent of the board as to become affected with a public interest, then they are subject to such public regulation by the Legislature and the courts as is necessary to prevent injury to such public interest.

* * * * * * *

We think the case made by the bill of complaint and the proofs brings it within the rule announced by the

[fol. 1100] Supreme Court of the United States in *Munn v. Illinois, supra.*

(*New York & Chicago Grain & Stock Exchange* v. *Chicago Board of Trade*, 127 Ill., 153; 2 L. R. A., 411.)

Franchises.—As already stated, these pipe lines are possessed of certain public franchises. They cross with their pipes innumerable highways and streets, a privilege that does not pertain to a strictly private business and is not enjoyed by citizens generally. These lines could not exist without these privileges any more than a railroad could exist without them. Some of the lines run upon the rights of way of railroads; all of them cross or run under these rights of way. These railroad rights of way are all obtained by public authority and are subject to a public control. Some of the lines cross or run upon the public domain and Indian lands by special grants. These are special privileges granted under an act of Congress and limited to pipe lines; these privileges are not possessed by citizens generally, and can only be enjoyed by the person or corporation who is building and intends to maintain a pipe line for the transportation of oil.

The line of decisions is well understood which hold that *quasi-public* corporations and public utility companies receiving such grants, privileges and franchises are subject to Governmental regulation.

Public markets.—A statute of Minnesota declared that "All elevators and warehouses in which grain is received, stored and shipped or handled, and which are situated on [fol. 1101] the right of way of any railroad, depot grounds, or any lands acquired or reserved by any railroad company" to be public elevators, and to be under the supervision and subject to the inspection of the Railroad & Warehouse Commission of the State of Minnesota. Penalties were provided in case of a failure to comply with the act. A firm operating such a warehouse, strictly for their own purposes, was charged with a violation of the statute. The case came to this court, and the court, speaking through Mr. Justice Harland, said:

> The State court well said that the defendant's warehouse could be fairly regarded as "a sort of public market where the farmers come with their grain for

> the purpose of selling the same, and where the purchaser, a party in interest, acts as marketmaster, weighmaster, inspector, and grader of the grain." We cannot question the power of the State, so far as the Constitution of the United States is concerned, to require a license for the privilege of carrying on business of that character within its limits,—such a license not being required for the purpose of forbidding a business lawful *or harmless* in itself, but only for purposes of regulation. (*W. W. Cargill Co.* v. *Minnesota ex rel. Railroad & Warehouse Commission*, 180 U. S., 452, 467-468.)

That is precisely what these pipe lines do. By their own agents they grade, measure, and purchase the oil. There are no other markets at which the producer can sell his oil. [fol. 1102] They are the public markets and the only public markets for crude oil. These markets are presided over and absolutely controlled by the pipe lines.

Extent of regulation.—The foregoing cases establish beyond any question that corporations exercising a business affected by a public interest, enjoying public franchises; controlling public markets; fixing the prices of commodities, and which are "virtual monopolies," are subject to governmental regulation. It only remains to determine to what extent this regulation may be carried.

It will be observed that running through all of these cases the doctrine, stated in various forms, is that these corporations "must submit to be controlled by the public for the common good, to the extent of the interest" which the public has in the business. The public is interested in various ways. It is interested in having reasonable rates for the services rendered; in having proper and good facilities; in having prompt and efficient service; equality of charges and service to all citizens alike; in having the business so conducted as — to endanger human life, or spread disease or immorality, *or create monopoly*. To prevent these evils, or any one of them, by regulation is within the power of the Government having control over the subject matter. Each case arising must be analyzed and a determination reached as to what the particular interest of the public is in the business, and what the evil is that is to be eradicated or from which the public is to be pro- [fol. 1103] tected. If it falls within any of the enumerated

cases for the exercise of Governmental regulation, then the regulation must be effective; it must eradicate the evil; it must protect the public against an imminent danger or an existing oppression. Having determined what that evil is the Government may, through its legislative body, adopt any measures that are convenient or expedient and which have direct relation to the matter to be controlled.

But it may be said that while it is true that the States of the Union, exercising a police power, may adopt such regulations, it is not within the power of Congress to do so. But it has been repeatedly held that in regulating, under the power conferred by the commerce clause of the Constitution, Congress may do everything for the protection of life, health, morals and property, and the destruction of monopoly that a State could do under its police power. The safety appliance act, the employers' liability act, the anti-trust act, the act for the suppression of lottery traffic, the pure food and drugs act and the white slave act, all sustained by this court, rest primarily and fundamentally upon the power of Congress, acting under the commerce clause, to do anything and everything that a State can do regarding the same general subject under its police power.

> It is the same right which attacked the law of Congress which prohibits the carrying of obscene literature and articles designed for indecent and immoral use from one State to another. Act of February 8, 1897, 29 Stat., 512, c. 172. *United States* v. *Popper*, 98 Fed. [fol. 1104] Rep., 423. It is the same right which was excluded as an element as affecting the constitutionality of the act for the suppression of lottery traffic through national and interstate commerce. *Lottery Case*, 188 U. S., 321, 357. It is the right given for beneficial exercise which is attempted to be perverted to and justify baneful exercise as in the instances stated and which finds further illustration in *Reid* v. *Colorado*, 187 U. S., 137. This constitutes the supreme fallacy of plaintiffs' error. It pervades and vitiates their contentions. (*Hoke and Economides* v. *United States*, 227 U. S., 308, 321.)

Public interest in pipe lines.—We come to inquire then, What is the public's interest in the business of the appellees? It is this. By the discovery and development of

a new mode of transportation, and by securing absolute control of practically all of it, and by refusing to conduct this transportation business for the public, and using the necessity for pipe-line transportation as a compelling force, the appellees effectually control the prices of a great domestic product, thus producing not only a virtual monopoly but a complete monopoly of the oil business. We have already stated the facts which show this conclusively. It does not meet the question at issue to show that since the passage of this act, and by the enforcement of the anti-trust act, the Standard Oil Co. has been compelled to loosen its grip to some extent upon these pipe line companies. The validity of a legislative act must depend upon the [fol. 1105] conditions existing at the time the act was passed. The court may not say that the conditions which compelled this enactment have since been changed and in our judgment, therefore, the act ought not to be upheld and enforced. Even if this were possible, we might say that conditions still exist which would warrant the legislation. These pipe line companies are still supplying the same refineries with the crude oil. They still fix and maintain a monopoly price to the producer of crude oil and to the refiner who buys the crude oil of them through the control of this means of transportation. But we insist that the court must consider the conditions existing in 1906, when this act was passed, when the Standard Oil Co., as a single controlling proprietor, fixed the prices of crude oil, monopolized it, and fixed the price and controlled the refined products. Its only competitor was the Pure Oil Co. and a few small refineries. The proceeding in the *Standard Oil Case, supra,* broke, to an extent, the monopoly created by a unified ownership of the stocks of all the companies; but that dealt with only one part of the monopoly. At the other end of the line in the fields of production, a complete monopoly of the product and the price is maintained. The only method of transporting crude oil being in the hands of these so-called private operators, they refuse to transport unless the product is sold to them at their price.

The remedy.—There was but one way in which this monopoly could be broken, and that was to open the fields of [fol. 1106] production to competitive buyers; to make it possible for competing refineries to be established and maintained; these results could only be secured by separat-

ing the business of transportation from the business of buying and selling, and from the business of refining. This segregation could only be accomplished by declaring that the business of transporting oil by pipe lines should be carried on by common carriers. No other remedy could reach and cure the evil.

It is not to be supposed that the individual producer will ship his own oil to the refinery. The growers of wheat do not ship their individual products to the market; they sell to the buyers in the market, and the buyers are there because they can transport their purchases over common carrier lines to any market. They represent the mills that grind wheat into flour, the exporters who send it abroad, those who hold the grain in elevators for a profit. These buyers of wheat would not be in the fields of production were it not for the fact that the transportation lines are common carrier lines. Along these rail lines there are mills and elevators. These could not exist if the transportation lines for the carrying of wheat were monopolized and controlled by a few mills and a few elevators on the seaboard or in the middle west.

Coming back now to our first proposition, that the regulation extends to the correction of the evil; the protection of the interest which the public has in the business; it must be [fol. 1107] clear that this statute of 1906 was the remedy, and the only effective remedy that could be applied. It was therefore within the plenary power of Congress over interstate commerce to declare that the carriage of oil by means of pipe lines should be by common carriers under the act.

Connection with interstate commerce.—That this subject matter, the monopoly of crude oil, was connected with interstate commerce and within the control of Congress, can not be doubted when we consider that it was created directly through, and by means of, the agencies of transportation, and that transportation was interstate commerce.

> Of course, as has been often said, Congress has a large discretion in the selection or choice of the means to be employed in the regulation of interstate commerce, and such discretion is not to be interfered with except where that which is done is in plain violation of the Constitution. *Northern Securities Co.* v. *United States*, 193 U. S., 197, and authorities there cited. In this connection we may refer to *Johnson* v. *Railroad*, 196 U. S., 1,

relied on in argument, which case arose under the act of Congress of March 2, 1893, 27 Stat. 531, c. 196. That act required carriers engaged in interstate commerce to equip their cars used in such commerce with automatic couplers and continuous brakes, and their locomotives with driving wheel brakes. But the act upon its face showed that its object was to promote the safety of employes and travelers upon railroads; and this court sustained its validity upon the ground that it mani- [fol. 1108] festly had reference to interstate commerce and was calculated to subserve the interests of such commerce by affording protection to employes and travelers. It was held that there was a substantial connection between the object sought to be attained by the act and the means provided to accomplish that object. (*Adair* v. *United States*, 208 U. S., 161, 177.)

In the *New Haven Railroad* v. *Interstate Commerce Commission*, 200 U. S., 361, it was held by this court that the provisions of the interstate commerce act as to uniformity of rates and against rebates operated to prevent a carrier engaged in interstate commerce from buying and selling a commodity which it carried in such a way as to frustrate the provisions of the act, even if the effect of applying the act would be substantially to render buying and selling by an interstate carrier of a commodity which it transported practically impossible. The foregoing statement is made by the court in *United States* v. *Delaware & Hudson Co.*, 213 U. S., 410-411.

In the amendment of June 29, 1906, usually referred to as the commodities clause of the Hepburn Act, it was made "unlawful for any railroad company to transport • • • any article or commodity, other than timber and the manufactured products thereof, manufactured, mined or produced by it, or under its authority, or which it may own in whole, or in part," etc. This act was considered by this court, and as construed was held to be "within the power [fol. 1109] of Congress to enact." (*United States* v. *Delaware & Hudson Co.*, 213 U. S., 366; *United States* v. *Lehigh Valley Railroad Co.*, 220 U. S. 357.)

The commodities clause separates the business of transportation from the ownership of the commodity shipped. While the cases are not the same, the principle involved in the three last cases cited sustains in part the doctrine con-

tended for in this case, namely, that Congress has the power to segregate the business of transportation from any other business. If this can be done, it would seem clear that it can declare that the transportation shall be carried on by common carriers where legislative reasons exist for doing so.

We respectfully submit that, under the general law announced in the foregoing cases, Congress had the power to declare that thereafter all persons or corporations engaged in the transportation of oil by pipe lines should be common carriers, for the purpose of protecting the interest of the public in a business "affected with a public interest."

II

Does the act to regulate commerce as amended in 1906, require that all persons and corporations thereafter transporting oil by pipe lines, shall be common carriers under and subject to the act?

By the amendment of June 29, 1906, the act is made to read as follows:

> That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except [fol. 1110] water, and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, *who shall be considered and held to be common carriers within the meaning and purpose of this act.*

Section 6, requiring schedules of rates to be filed with the commission, was also amended, and in so far as it affects the issues in this case, it reads as follows:

> Any common carrier subject to the provisions of this act shall file with the commission created by this act * * * schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, *by pipe line*, or by water when a through route and joint rate have been established.

It is claimed by the appellees that the language used in the amendment to section 1 was not intended to apply to private pipe lines; that is, pipe lines which did not, at the time of the adoption of the amendment, hold themselves out as common carriers, or did not offer to transport oil for the public.

The statute as amended seems to be plain and unambiguous, but before discussing the language used it is proper under the rule laid down by the Supreme Court, hereafter cited, to refer to the debates in Congress for the purpose of throwing light upon the language and phrases adopted, and also to show the purposes of, or reasons for, the legislation.

[fol. 1111] These debates show (*a*) that the language adopted was intended to and does operate to restrict the transportation of oil by pipe lines to common carriers under the act, and (*b*) that the purpose of the act was to break, and in a measure destroy, a monopoly in petroleum oil.

Debates in Congress.—Pipe lines were not originally included in the "rate bill" introduced in the Fifty-ninth Congress (first session), but on May 4, 1906, shortly after the receipt by the Senate of the special message from the President transmitting a summary of the report of the Commissioner of the Bureau of Corporations on the subject of the oil industry, Senator Lodge introduced an amendment, to be inserted in the first section after the introductory words, "That the provisions of this act shall apply to." The amendment reads as follows (Congressional Record, p. 6361):

> any corporation, or any person or persons engaged in the transportation of oil or other commodity, except natural gas or water for municipal purposes, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this act, and to——

Mr. Foraker said:

> I do not want to make any opposition to the Senator's amendment, but it occurs to me that the amend-
> [fol. 1112] ment ought to be further amended, so as to provide that it shall apply only to pipe lines *operated*

for the public. I do not understand how you could compel a man who has a private pipe line of his own *to become a common carrier.* * * * I think such a limitation ought to be put in the Senator's amendment by an amendment to the amendment that it shall apply to all pipe lines that are *carrying for the public,* and not to private lines that an individual or a single corporation may have laid down and put into operation for its own benefit * * *. [Citing an Ohio corporation, Senator Foraker further said:] They are allowed to exercise the power of eminent domain, and they are, by the terms of the statute, called "common carriers" for that reason. They are supposed to be wholly within the State of Ohio, * * * but a pipe line of that kind [private] is not contemplated to be used as a common carrier, but simply for a specific private individual purpose in the sense that it belongs only to one company (pp. 6361-2).

Mr. Tillman: I think the test is whether they are engaged in interstate commerce—whether the commodity they are transporting would come under the rule of interstate commerce—which we are allowed to regulate. That is my idea of the test of this whole question (p. 6362).

Mr. Clay: Is it not true that if the amendment is adopted the entire provisions of section 1 would apply to it and absolutely make it an article of interstate commerce?

Mr. Lodge: Absolutely.

[fol. 1113] Mr. Cuberson: That is the question I suggested. I am not sure it will, but I understand that is the purpose of the Senator from Massachusetts * * * (p. 6363).

Mr. Nelson: In reference to the amendment suggested by the Senator from Ohio to the amendment of the Senator from Massachusetts, I desire to state that if the amendment is adopted it will practically nullify the provision, because every one of these pipe lines can say "*we refuse to do business for the public.*" Practically the [original] amendment would be of no use at all. * * *

Mr. Lodge: Mr. President, *the purpose of this amendment is to bring the transportation of oil and other*

commodities within the interstate-commerce law. Oil is one of the greatest articles of interstate commerce carried in this country, and is now absolutely outside and beyond any Government regulation whatsoever. * * * But the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come, under this rule, *will*, as the Senator from Minnesota [Mr. Nelson] says, *absolutely destroy the value of my amendment.*

The small well owner, to whom there have been pathetic references this morning, has not yet made his objections known to me. I heard within 24 hours after the introduction of my first amendment, on May 28, from the Standard Oil Co. A representative of that company came to see me on the following day, [fol. 1114] and represented the uselessness and injustice of this amendment. I have had a great many letters from small oil owners, and I have had a great many letters from independent refiners in support of the amendment, and the objections suggested by the Senator from Maine and the Senator from West Virginia really do not touch the case. * * *

I do not see and I have yet to hear a single valid argument why this great company [Standard Oil Co.], doing this enormous interstate business in one of the greatest articles of interstate commerce and of export and import, should alone be excluded from the supervision of the Interstate Commerce Commission.

There are twenty-eight principal pipe lines in the United States, for the most part trunk lines. There are fourteen local or gathering lines. Twelve of the principal lines are combined in one system under one control, extending from Indian Territory and from Tennessee to the Atlantic seaboard. Five other principal lines form a system under one control, extending from West Virginia and Ohio through the Pennsylvania oil fields to Philadelphia. Of the lines and trunk lines referred to, nine are known to extend across State lines, and (p. 6365) there are two about which there is some doubt, although it is probable that they do. * * * I do not think myself, from reading the definitions of those decisions, that the fact of being [fol. 1115] common carriers or exercising eminent

domain is necessary to the definition of interstate commerce.

I will read simply the leading definition before I go on, which is *County of Mobile* v. *Kimball;*

"The buying and selling, and the transportation incidental thereto, constitute commerce, and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation."

There has been legislation in regard to pipe lines in twenty-one States. * * *

I have here a list of the authorities, State and United States, simply showing that corporations engaged in the transportation of gas, oil, water, or supplied power, from a point in one State through or into another State, are engaged in interstate commerce. I will ask to have it printed with my remarks, as I have no time to go into it further. * * *

Now, Mr. President, the oil is brought to the trunk lines through small local feeding and gathering lines, as a rule. There are practically two great companies that control pipe lines engaged in interstate commerce. One is the Standard Oil, which is said, roughly, to control 90 per cent. I do not know whether that is correct or not. The other is the Pure Oil. They do not own the wells, and they buy the oil of the well owner, and the charge for the transportation is taken out of the price, as appears in the copies of the certificates and receipts which I have here.

[fol. 1116] *Those well owners are absolutely at the mercy of the pipe lines.* I have had cases brought to me, which in this fifteen-minute debate I can not enlarge upon, where an independent refinery has been deprived of its supply of oil because it would not agree to the prices of the pipe lines. *A small well owner is compelled to take the price that is offered by the controller of the trunk line.*

This is not a case of a transportation company owning the property, like a railroad owning a coal mine. It is exactly like a railroad *buying the coal of a coal miner and transporting it.* * * * The pipe line companies buy the oil they use in their own refineries and owing to the fact that they buy the oil, if you put in the words "*carry for the public,*" the pipe lines go

right out from under this amendment in my judgment. * * *

It seems to me that when we are putting under the control of the Interstate Commerce Commission transportation that is partly by rail and partly by water we ought not to omit transportation of one of the greatest and most useful commodities that enter into daily life because it is partly by pipe line and partly by rail and partly by water. * * *

No small oil well owner is going to be hurt. There is no proposition, as the letter read by the Senator from Maine (Mr. Hale) indicates, to push up the prices or push down the prices and make it impossible for a pipe line to operate. It is simply to give relief, if relief is sought, to those who find that they are not [fol. 1117] fairly treated, or think they are not fairly treated by the pipe lines, through which alone, practically, they can get their commodity to market (p. 6366).

May 15 the bill was again before the Senate. The clause had been amended to read:

Any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas by means of pipe lines or partly by pipe lines and partly by railroad or partly by pipe lines and partly by water, at any place within the jurisdiction or within the governmental authority of the United States who shall be considered and held to be common carriers within the meaning and purpose of this act, and to—

Mr. Hopkins called attention to the fact that the words commencing with "governmental authority" were an amendment proposed by Senator Morgan, and called attention to the fact that this would cover the Philippines, Porto Rico, Isthmus of Panama, and Hawaiian Islands (p. 6896). In a message by President Taft, upon this feature the provisions in the Lodge amendment are referred to. He says:

The wisdom of a provision *of law declaring that a pipe line in this country shall be made a common carrier between States* is wholly aside from the point, for it is not at all analogous to the one I am discussing.

The pipe lines constructed in the States are pipe lines under permanent franchises, *much more likely to invite* in this country *the monopoly* than a mere revocable [fol. 1118] license. The conditions on the Isthmus are, of course, entirely unsettled; * * * if it becomes wise to require that these pipe lines [in the Philippines] be made common carriers in the future, the President may effect this result *under the revocable license by withdrawing the license unless the change is made, or it may be done by act of Congress,* but, with deference, I think it ought for the present to be left to the President's discretion to say when the occasion has arisen for the change (p. 6896).

Mr. Morgan. Then I take it for granted the Senator from Illinois (Mr. Hopkins) *wants to reverse the action* taken by the Senate *in regard to making pipe lines common carriers* and is opposed to the entire project. He does not want the Government of the United States to *declare that pipe lines are common carriers* and that they are subject to regulation as to rates by the Interstate Commerce Commission. Is that the situation? (p. 6896).

May 17, the rate bill being under consideration, Mr. Nelson said:

The Standard Oil Company has a large pipe line running through the country. That pipe line has many feeders. Private parties built pipe lines to the trunk line to run the oil from their own wells which are connected with the pipe lines of the Standard Oil Company, which company buys from these various small dealers. The different parties who have these feeding lines from their wells ship their oil to the trunk line. Their relation to the public is exactly the same as the [fol. 1119] Elevator Company to which I have referred in Minnesota. We have as much right to control such pipe lines as the public have a right to control that grain elevator at Lanesboro in Minnesota. The Standard Oil Company purchases oil from the independently shipping oil owners, who have built little feeding lines connecting with the trunk lines of the Standard Oil Company. It *purchases their oil and holds a monopoly of the use of the main line;* and unless it is put under

> the control of the Interstate Commerce Commission it can carry on its business with impunity, *and practically destroy all the independent dealers and the independent lines* (p. 7001).

Mr. Teller, who took an adverse position, contended against the language of the Lodge amendment on the ground *that it interfered with private ownership,* recognizing that the purpose and intent of the amendment was to cover all lines doing interstate business (p. 7008).

Mr. Clay, discussing the commodity clause, said:

> A private company, engaged in transporting its own oil or gas through pipe lines constructed at its own expense, should not be deprived of the privilege of transporting its own oil or gas. These lines are used for no other purpose, and if they can not be used for this purpose then they must be abandoned. The rule must be, then, for railroads, because they exercise the right of eminent domain and were chartered to do business for the public.

His position being that the *effect of the language* of the Lodge amendment would be to make them common carriers [fol. 1120] and deprive private lines of their right to carry their own oil (p. 7009).

Mr. Stone said:

> I have not believed, Mr. President, that the pipe lines constructed by a company or an individual for use solely in his or its own business, or for transmission of his or its own product and used for that alone, would be subject to the *provisions of this proposed law.* But the first section of this bill *does provide that all pipe-line companies engaged in carrying oil* or other commodities from one State or District to another *shall be considered common carriers* (p. 7016).

Mr. Bacon undertook to give a different meaning to the words of the amendment so as to make it apply only to pipe lines that were common carriers, using the same construction contended for in this case (p. 7016).

The bill being again under consideration in the Senate on June 25, Mr. Tillman said:

> We had gladly consented to the change in the first conference *placing pipe lines unequivocally and in*

the plainest possible language in the list of common carriers, but with this change of phraseology Senators will see the possibility of numberless lawsuits.

Mr. Tillman was discussing the commodity clause and the change substituting the word "railroad" for "common carrier" and he further said:

> Again, I want to get back to the change of "common carrier" to "railroad." As I said, instead of the [fol. 1121] producing of oil along with the producing of coal being divorced from the transportation of oil and the transportation of coal as the Senate intended, the provision simply limits the divorce to railroads, and by changing "common carrier" to "railroad" you let the Standard Oil Company loose absolutely from this provision [commodity clause], and we encourage and perpetuate that grinding monopoly (p. 9103).

Mr. Lodge said:

> I believe to *make them common carriers in the language of the act* would bring the great trunk lines within the operation of the act, and, I think, will do it sufficiently so far as carrying oil to market. Of course, what all oil producers desire to reach, is a line which will carry their oil to the great distributing centers and especially to the seaboard. I think under this clause as it now stands these trunk lines which are practically 90 per cent in the control of the Standard Oil *may be compelled to take the oil of other producers.*
>
> When the commodity amendment was added they became then, *as we have defined them to be, common carriers.* They then would have been unable, if engaged in interstate commerce, of course, to own oil wells or to own oil. They would have done simply a carrying business. It was changed to "railroad" in that clause *in order to relieve the independent company* [from the commodity clause].
>
> My own belief is that what is relieved is the Standard Oil. The commodity amendment was not my amendment, but *was added after the amendment I of-* [fol. 1122] *fered had been agreed to.* * * * I can see no possible reason why the men controlling these great trunk lines of pipes should not make it *a carry-*

ing business and be content to *carry oil for all producers at a reasonable rate.* We make the railroad do it, and I do not see the slightest reason for this change. But there is no doubt that the effect of the change [commodity clause] is to take the pipe lines out of that section and leave it to apply only to the railroads (p. 9104).

Senator Elkins presents as a part of his argument the West Virginia statute making pipe lines common carriers (p. 9250).

The bill being under discussion June 26, Mr. Long said:

This bill makes all pipe lines common carriers without any exception.

Mr. Mallory. *Yes; this bill says that,* but this bill can not make a common carrier out of a line that is not a common carrier.

Mr. Long. *That will be for the courts to determine* (p. 9254).

Mr. Foraker. A majority of the Senate insisted that this provision should apply, as the Senator from Massachusetts contended it should, to all pipe lines, *without regard to whether they were carrying for the public or not,* his contention being that such a qualification would destroy the effect of what he was trying to accomplish (p. 9255).

Mr. Long. But *the intention of this amendment,* as the Senator will admit, *is to take in all pipe lines. There are no exceptions,* and it will take a decision of [fol. 1123] the courts to determine whether the Senator and myself are right in that proposition (p. 9256).

Mr. Long. If Congress has the power to make a common carrier out of a pipe line that is owned by a corporation which is using it to transport its own product, *and this is so in this law,* it should except pipe lines in the commodity section *and not prevent the owner of a pipe line that crosses a State line from transporting his own oil in his own pipe line* (p. 9257).

Mr. Long was here discussing the Prairie Oil & Gas Co. (p. 9256).

Mr. Richardson. We have declared them in this bill to be common carriers, and unless we had "railroad

companies" for "common carriers" in the fifth amendment *we would have prohibited these pipe lines from carrying their own oil* (p. 9581).

Mr. Elkins, referring to telegrams and petitions, said:

> The signers of these telegrams expressly say that they have no objections *to making pipe lines common carriers,* but they protest against not being permitted to transport their own product (p. 9647).

The Lodge amendment being before the House of Representatives on June 26, 1906, Mr. Rhinock brought before the House facts and claims regarding the different pipe lines, and stated the purpose of the law as he understood it. He informed the House fully with reference to the objections made by so-called private lines, and presented [fol. 1124] arguments in favor of covering all trunk lines with a provision *making them public carriers.* He based his line of argument, in favor of the constitutionality of the bill, upon two grounds, (1) that they exercised the right of eminent domain and (2) that they constituted a public market and therefore were subject to control. He does not discuss the question upon the broad fundamental principle that Congress has plenary power over all interstate commerce and can declare by what agencies it may be carried on. But the discussion by Mr. Rhinock is important as showing the understanding of the controversy in the House as to the scope of the Lodge amendment.

Mr. Rhinock refers to a House bill, introduced by him (H. R. 15438), entitled "A bill to declare certain persons, firms, associations, and corporations to be common carriers and subject them to the provisions of the interstate commerce act," and said:

> *I want pipe lines to be common carriers* under the law, and whether that end shall be reached under the separate bill introduced by me last February *or by the adoption of the Lodge amendment to the Senate bill is immaterial.* * * * It has been suggested that pipe lines for oil are private lines, private property, and that this legislation will affect them injuriously. * * * The contention is that all of the pipe lines now doing business throughout the country are public and not mere private lines. It is true that they claim that

they only transport their own oil—that they carry only their own goods.

[fol. 1125] He then proceeds to discuss the question upon the two propositions above named—exercise of eminent domain and that through the practice of buying oil at the wells they create public markets; cites the Lanesboro Elevator case (Minnesota), opinion by the Supreme Court of the United States. (180 U. S. 452.) He further said:

> The Standard Oil Company, owning 90 per cent of all the pipe lines of the country, has a large pipe line running through the country which is fed all along its length by a host of feeders. Private parties built pipe lines to the trunk line to run the oil from their own wells, which are connected with the pipe lines of the Standard Oil Company, which buys the oil from these smaller dealers. The different parties who have these feeding lines from their wells ship the oil to the trunk lines and stand in the same relation to the public that the Elevator Company does in Minnesota. The United States has as much right to control these pipe lines as the State of Minnesota has to control private elevator companies.
>
> The Standard Oil Company needs this regulation most. It purchases the oil from the independently shipping oil owners who built the feeding lines to the great trunk line of the Standard Oil Company. It purchases their oil and refuses to pipe it beyond the point of intersection with the oil owners to a possibly better market beyond. *It monopolizes the trunk line carriage, and is subject to control on the ground that it buys oil from the owner, measuring and grading it in their own way, and therefore occupies the position of* [fol. 1126] a public market subject to public control.
>
> The pipe lines ought to be brought under the control of the Interstate Commerce Commission (p. 9337). Its enormous trunk line—the largest in the world—makes it peculiarly appropriate that it should be brought under this control. * * *
>
> And I am opposed to any change in the verbiage of the bill which shall attempt to except such pipe lines from the operation of the law "which do not transport for hire" or "transport for the public." While the

Standard Oil Company does the greatest business, it is not therefore necessary for us to legislate against them alone.

The law must be general, and all pipe lines must be treated alike. * * *

Conclusions to be drawn from these debates.—One can not read these debates without reaching the conclusion, beyond the peradventure of a doubt, that the Senate and the House, when the amendment of 1906 was finally adopted, understood that the language of the Lodge amendment meant to and did declare that all persons or corporations thereafter operating pipe lines for the interstate transportation of oil should be, and should be held to be, common carriers; that Congress had before it (1) the system of pipe lines owned, operated, and controlled by the Standard Oil Company, and (2) the pipe lines owned, operated, or controlled by the Pure Oil Company, and that the purpose of that legislation was to bring these, with all other lines, [fol. 1127] under the regulating power of the Interstate Commerce Commission, thereby breaking the existing monopoly. The pipe lines owned, operated, and controlled by the Standard Oil Company at that time are set forth in the decree of the Circuit Court of the United States herein referred to, a copy of which is Exhibit A to the answers of the Interstate Commerce Commission (Rec. No. 482, p. 71). The lines connected with the Pure Oil Company are the United States Oil Company and the Producers and Refiners Oil Company.

The monopoly under consideration by Congress, and aimed at by this legislation, was created by the methods and practices of operating pipe lines, in connection with the great refineries, buying crude oil at the wells in the fields of crude-oil production, and refusing to carry oil through the pipe lines upon any other condition than that the producer should sell his product to the pipe-line company or the refineries at arbitrary prices fixed and posted at the wells by the pipe-line companies. It was connected with, and resulted directly from, the method of transportation. Only as a private business could these prices be controlled and competition excluded.

Rules of construction.—The general purpose and aim in construing a statute is to ascertain its true meaning and

its true application to concrete cases. For this purpose resort may be had—

1. To the language and arrangement of the statute.

2. The intention and object to be secured by the legislation.

[fol. 1128] 3. Matters and circumstances attending its passage.

4. Sense in which it was understood by the legislators and contemporaries.

5. Its relation to the law into which it is incorporated as an amendment.

6. As amended, the statute must be considered as a whole.

(Cyclopedia of Law and Procedure, vol. 36, pp. 1102, 1136, 1138 et seq.)

Aids to construction.—The statute, considered as a whole, furnishes the best guide for its construction, and the ascertainment of the sense in which the words of an amendment were used.

But if, after considering the language of the entire statute, there remains a doubt as to its meaning, the court may consider extrinsic matters, such as the circumstances existing at the time of its enactment. (*Standard Oil Co.* v. *United States,* 221 U. S. 1, 50.)

Other legislation on the same subject may be considered, and the results that would follow a different construction.

> Courts, in construing a statute, may with propriety recur to the history of the times when it was passed, and this is frequently necessary in order to ascertain the reason, as well as the meaning, of particular provisions in it. (*United States* v. *U. P. R. R. Co.,* 91 U. S. 79.)

The purpose of the act.—The purpose of the amendment to the act in 1906 is clearly shown by the debates in Congress, to have been to bring the systems of pipe lines, [fol. 1129] carrying the crude oil of this country, under the act to regulate commerce and to require them to be common carriers if they continued the business of transportation. The reason for this regulation was a desire to break the monopoly and to give the producers of crude oil open markets. It was not expected that the producers would

make individual shipments of oil, any more than the producers of wheat ship their wheat to the great markets. The farmer sells his wheat to the general buyer; the general buyer having an open way to the great markets over common-carrier lines of railroad and boats, it results that there are many buyers in the markets. The farmers get the benefits of competition, not by shipping their own wheat, but by marketing it where there are many buyers. It had come to pass that only the great refineries, who could own, or operate, or control the pipe lines, were the buyers of crude oil in the fields of production. If a person with capital desired to erect a refinery, and thus extend the business and the competition, he must build a pipe line for his refinery. If competing refineries existed, individual buyers could not go into the fields of production and buy the oil, because they could not ship it to any refinery except one controlling a pipe line and these refineries were supplying themselves through their own pipe lines *at arbitrary prices fixed by themselves.* The purpose of the legislation, therefore, was to open the fields to competition, that there might be buyers of oil, as there are buyers of grain, in the fields of production; that there might be an inducement for capital [fol. 1130] to go into the business of refining, with equal rights over the lines of transportation. To accomplish these ends, and others that might be named, Congress sought to and did declare that the interstate transportation of oil should be by common carriers only. It did not apply the commodity clause to oil as it did to coal. The existing refineries, therefore, can ship their supplies of oil, but in the future must buy in open markets in competition with any other buyers or refineries that seek the oil. It is only the monopoly that is destroyed. These pipe lines will still continue to carry all the oil that the refineries can use and all the oil that any additional refineries may require; they will meet the increased demand for transportation by increased facilities, as the railroads have done, provided they are limited to the business of transportation.

To destroy a monopoly, created by transportation methods, is a proper object of legislation under the commerce clause.—In *Pearsoll* v. *Great Northern Railway Company*, 161 U. S., 646, 676:

> Whether the consolidation of competing lines will necessarily result in an increase of rates, or whether

such consolidation has generally resulted in a detriment to the public, is beside the question. Whether it has that effect or not, it certainly puts it in the power of the consolidated corporation to give it that effect—in short, puts the public at the mercy of the corporation. There is, and has been, for the past 300 years, both in [fol. 1131] England and in this country, a popular prejudice against monopolies in general, which has found expression in innumerable acts of legislation. We can not say that such prejudice is not well founded. It is a matter upon which the legislature is entitled to pass judgment. At least there is sufficient doubt of the propriety of such monopolies to authorize the legislature, which may be presumed to represent the views of the public, to say that it will not tolerate them unless the power to establish them be conferred by clear and explicit language.

In *U. S. v. Knight*, 156 U. S., 112, Mr. Chief Justice Fuller, speaking for the court, said:

> The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly. *But it may operate in repression of monopoly whenever that accrues within the rules by which commerce is governed or whenever the transaction is itself a monopoly of commerce.*

The whole country was aroused by this monopoly of a national product, valued at nearly $150,000,000 per annum. A special inquiry had been instituted by the Department of Commerce and Labor, under a resolution by Congress, into the industry, and this enactment was the result of a widespread public conviction, supported by the report of the department, that the monopoly was deep-seated and perilous—a menace to the public welfare.

[fol. 1132] *The language of the statute.*—Bearing in mind, then, the objects, so clearly stated in the debates, let us analyze the separate declarations in this amendment to the law.

The act to regulate commerce was enacted to control or regulate common carriers; all rail carriers, and such others as might be brought under it. Every person or corporation

subject to regulation under this act, or was to become, a common carrier, otherwise the act would be inappropriate. The amendment follows the declaration in the original act, that "the provisions of this act shall apply to," and reads, any corporation, person, or persons "*engaged in the transportation of oil by pipe lines.*" This declaration has no condition or words of limitation; it applies to a commerce, "the transportation of oil by pipe lines." All corporations or persons engaged in the interstate transportation of oil by pipe lines are included. The amendment again declares that these corporations and persons, the agents of this transportation, "shall be considered and held to be common carriers within the meaning and purpose" of the act. "*They shall be considered*" is plain, unambiguous language, and is susceptible of only one meaning when used in a public statute. It governs the action of all legislative, executive, and judicial officers having to do with the statute, or the business, and declares that these officers and departments of government shall *consider* these corporations and persons so engaged *to be common carriers.* Not only that, [fol. 1133] but another word is inserted, they shall be "*held*" to be common carriers. This is to make the declaration plain to the judicial department of government when called upon to interpret this statute and enforce it. They shall be *held* to be common carriers under the act.

The language could not be plainer or less unambiguous.

It may be observed also that Congress subsequently, in amending this act, June 18, 1910, brought under the statute "telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages" interstate, by inserting the designation of these companies into this amendment, preceding the words which we have been discussing "who shall be considered and held to be common carriers." These telegraph and telephone companies were private companies; they had no power of eminent domain, and yet, if they are under the act and subject to it, as undoubtedly they are, they are made so by the very language which was made applicable to all pipe-line companies.

Therefore, considering the language used, its relation to the statute, the debates in Congress, the purposes for which it was passed, the plain reading of the words and the effect to be given the whole act, the statute clearly declares that all pipe-line companies, whether corporations or persons, who may voluntarily transport oil by pipe lines, shall

be common carriers under and subject to the act to regulate commerce.

[fol. 1134] III

If the act as amended does require that all corporations and persons thereafter engaged in the interstate transportation of oil by means of pipe lines shall be common carriers, is the act constitutional?

To answer this question requires a consideration of the comprehensive powers of Congress over interstate commerce, the restriction upon such power in the fifth amendment to the Constitution, and a careful analysis of the act under consideration and its effect upon the business of the appellees.

Power of Congress over interstate commerce.—The power of Congress is fixed by two clauses in the Federal Constitution, article 1, section 8, paragraphs 3 and 18. Summarized for this case, *Congress has power to "regulate" interstate and foreign commerce and make all laws necessary and proper to carry into effect the power to regulate.*

Mr. Chief Justice Marshall, in *Gibbon* v. *Ogden*, 9 Wheaton, 1, 196, stated this power as follows:

> It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.

This definition has been accepted by this honorable court without deviation since it was uttered. It has been elaborated and applied to many varying cases; and it may be said that in all cases the power of Congress over interstate [fol. 1135] and foreign commerce has been declared to be plenary, with all the incidents of sovereignty that attend the manifestation and exercise and application of this power. In the *Lottery Case* this court, speaking through Mr. Justice Harlan, defined it as follows:

> * * * They also show that the power to regulate commerce among the several States is vested in Congress *as absolutely as it would be in a single government*, having in its constitution the same restrictions

on the exercise of the power as are found in the Constitution of the United States; that such power is *plenary, complete in itself,* and may be exerted by Congress *to its utmost extent* subject *only* to such limitations as the Constitution imposes upon the exercise of the powers granted by it; and *that in determining the character of the regulations to be adopted Congress has a large discretion which is not to be controlled by the courts, simply because,* in their opinion, such regulations may not be the best or most effective that could be employed. (188 U. S., p. 353.)

In the exercise of this power over interstate and foreign commerce the field of its exercise is coextensive and the subjects as innumerable as in the domain of the police power by the States. (White Slave Cases, 227 U. S., *supra.*)

Power to prohibit.—The power to regulate includes the power to *prohibit* particular interstate and foreign commerce. This question arose in the first case arising after the adoption of the Constitution, and engaged wide-spread attention in the United States. Congress, on December 22, [fol. 1136] 1807, passed an act entitled, "An act laying an embargo on all ships and vessels in ports and harbors of the United States," and a supplemental act was passed January 9, 1808. Privately owned and operated ships were carrying foreign commerce from ports of the United States to ships at anchor and to foreign ports. This act prohibited their business. The case was heard in the District Court of the United States for Massachusetts, and the opinion written by Davis, district judge. It was conceded that the act was not a war measure and was passed in the interests of commerce and peace. This was the legislative reason for the act. The act was sustained as being within the power of Congress, and the following excerpts from the opinion are here given:

* * * Stress has been laid in the argument on the word regulate as implying in itself a limitation. Power to regulate, it is said, can not be understood to give a power to annihilate. To this it may be replied that the acts under consideration, though of very ample extent do not operate as a prohibition of all foreign commerce. It will be admitted that partial prohibitions are authorized by the expression; and how shall the degree

or extent of the prohibition be adjusted but by the discretion of the National Government, to whom the subject appears to be committed? * * *

Further, the power to regulate commerce is not to be confined to the adoption of measures exclusively beneficial to commerce itself or tending to its advancement, [fol. 1137] but in our national system, as in all modern sovereignties, it is also to be considered as an instrument for other purposes of general policy and interest. The mode of its management is a consideration of great delicacy and importance; *but the national right or power under the Constitution to adapt regulations of commerce to other purposes than the mere advancement of commerce appears to me unquestionable.* (*United States* v. *Brigantine "William,"* 2 Hall's Am. Law Journal, 255.)

In *Gibbon* v. *Ogden, supra,* Mr. Chief Justice Marshall refers to these acts and concedes the power of Congress therein exercised. He said:

But all embargoes are not of this description. They are sometimes resorted to without a view to war, and with a single view to commerce. In such case an embargo is no more a war measure than a merchantman is a ship of war because both are vessels which navigate the ocean with sails and seamen.

When Congress imposed that embargo, which for a time engaged the attention of every man in the United States, the avowed object of the law was the protection of commerce and the avoiding of war. By its friends and its enemies it was treated as a commercial, not as a war, measure. The persevering earnestness and zeal with which it was opposed in a part of our country which supposed its interests to be vitally affected by the act can not be forgotten. A want of acuteness in discovering objections to a measure to which they felt the most deep-rooted hostility will not be im- [fol. 1138] puted to those who were arrayed in opposition to this. * * * They denied that the particular law in question was made in pursuance of the Constitution, not because the power could not act directly on vessels, but because a perpetual embargo was the annihilation, and not the regulation, of commerce.

The right to prohibit particular commerce has since been sustained by this court, where the prohibition has been exercised for the public welfare, notably in the meat-inspection and food-and-drugs acts, the lottery act, the commodity-clause act, and the white-slave act. This court sustained this power to prohibit, by its construction of the interstate-commerce act forbidding discrimination, and enforced it against the carrier, thereby rendering it impossible for the carrier to deal in the commodities which it carried. In reference to this practice, the court said:

> It was to compel the carrier as a public agent to give equal treatment to all. Now if by the mere fact of purchasing and selling merchandise to be transported a carrier is endowed with the power of disregarding the published rate, it becomes apparent that the carrier possesses the right to treat the owners of like commodities by entirely different rules. That is to say, the existence of such a power in its essence would enable a carrier, if it chose to do so, to select the favored persons from whom he would buy and the favored persons to whom he would sell, thus giving such persons an [fol. 1139] advantage over every other, and leading to a monopolization in the hands of such persons of all the products as to which the carrier chose to deal. Indeed, the inevitable result of the possession of such a right by a carrier would be to enable it, if it chose to exercise the power, to concentrate in its own hands the products which were held for shipment along its line, and to make it, therefore, the sole purchaser thereof, and the sole seller at the place where the products were to be marketed; in other words, to create an absolute*ly* monopoly. (*New Haven R. R.* v. *Interstate Commerce Commission*, 200 U. S., 361, 392.)

Thus we see that in the exercise of the power of regulation Congress may expressly, or by general prohibitions which the court will construe and apply in particular cases, prohibit absolutely a particular kind of transportation, which without such prohibition would be perfectly lawful.

Fifth amendment to the Constitution.—The only prohibition upon the exercise of this broad power of regulation is that contained in the fifth amendment, prohibiting the taking of property without compensation and without due

process of law. This provision is so familiar it need not be quoted.

As the prohibition in the statute under consideration is based upon the right to prohibit monopoly, we need not spend much time in citing authorities upon this branch of the case. If the Lodge amendment had for its purpose the destruction of a monopoly created by the transportation of oil by means of pipe lines by private persons or corpora- [fol. 1140] tions, and it has that effect only, the destruction of the monopoly is not a taking of property prohibited by the fifth amendment. It is an exercise of what is commonly denominated the police power, and any loss must fall upon the owner. (*North. Trans. Co.* v. *Chicago*, 99 U. S., 635; *Lottery Case, supra; N. Y. & N. H. Ry. Case, supra; Union Bridge Co.* v. *U. S.*, 204 U. S., 364; *Commodities Clause Case, supra; South. Ry. Co.* v. *U. S.*, 222 U. S., 26.)

Effect of the act upon the business of the appellee.—The business of transportation as a part of "commerce" is a distinct business. If a corporation is being organized to carry on a transportation business, it must be stated as one of the objects for which the corporation is organized. This was recognized by the Standard Oil Company in amending its charter in 1879. It is an object stated in the articles of incorporation and the articles of association of the appellees in this case. It was so recognized in the New Haven case and in the commodity-clause act and the decisions thereunder. True, without statutory prohibition corporations may include this transportation business with other businesses, but this does not diminish the force of the statement that the business of transportation is separate and distinct from all other occupations.

Three appellees are carriers, buyers, and sellers.—Three of the appellees are incorporated and engaged in the business of carriers of oil by pipe lines and the business of buying and selling oil. They do not consume or refine crude oil. Any effect of the act which affects refineries, therefore, [fol. 1141] does not affect these three appellees. They are practically and for all the purposes of this case in precisely the same position as to crude oil that the railroads were as to coal in the New Haven case. They buy and sell and they transport the commodity. Each "concentrates" in its own hands the products which were held for shipment and selects "the favored persons to whom he would sell," thus

enabling the carrier, in connection with the purchasers, "to create an absolute monopoly."

The effect of the act upon these three appellees is to prohibit the private carrying of oil by means of pipe lines, and to require them, if they voluntarily continue this occupation, to transport as common carriers. The act prohibits particular transportation—private transportation by pipe lines—but it throws open to the widest extent the transportation by pipe lines by common carriers. This does not destroy or impair the business of transporting oil by this means. In fact, these petitioners allege that it will increase their business and require additional facilities. The act does not prohibit their charging and collecting reasonable rates for such transportation service; it therefore does not require a service for the public without compensation. Nor does the act compel these appellees to be common carriers. As stated in the *Munn case:*

> He may withdraw his grant by discontinuing the use; but so long as he maintains the use, he must submit to the control.

[fol. 1142] It is insisted, and so held by the Commerce Court that the act *in effect* compels them to be common carriers, as it can not be supposed that they will withdraw from the business. That is not the edict of Congress. It is a compelling, economic force, and good sense that will lead these appellees to continue a very prosperous and profitable business.

The conclusion is inevitable that the only effect of this regulation by Congress is to destroy the monopoly occasioned directly by the private carriage of crude oil by pipe lines, and that in every other respect the traffic and the business are free and unaffected. It can not, therefore, be said that this is a taking of property within the meaning of the fifth amendment. It is a true and proper regulation of this transportation business by these means, which have come into being in the last few years and absolutely dominate the oil industry.

Three are carriers and refiners.—The three other appellees are engaged in the transportation of oil as carriers and in the business of refining crude oil. By the private carriage of the crude oil through their pipe lines and the purchase of it at the wells, either by their own pipe lines or

connecting pipe lines, they have created and are maintaining a monopoly. The keen eye and shrewdness of the monopolist is not better illustrated or exemplified in the history of trade and commerce than it is in the move by which the Standard Oil Company acquired its present pipe lines. As we have seen, up to 1906 these pipe lines were owned and [fol. 1143] operated by corporations which, under the act of incorporation and the laws of each State under which they are severally incorporated, required them to be common carriers. The fact that they had gone outside the State in building pieces of their lines did not change the character of the agent. It was still a common carrier by law. The States had not rigidly enforced, and could not be expected to enforce extra-territorially, the provisions of the law making the National Transit Company and the New York Transit Company common carriers. The National Government was about to take action and require common carriers to file their tariffs and authorize its commission to pass upon the reasonableness of the rates; in other words, to compel obedience to the law. The Standard Oil Company owned the two transit companies absolutely, and it immediately proceeded, through its controlled directorates, to cut off the feet of these common carriers in order to prevent the carriers being of any practical service to the public. They stopped the common-carrier lines at Unionville, Centerbridge, and Fawn Grove, places in the open fields, with no rail connections; nothing at either place to induce the building of a refinery or the location of any sort of a consumer of crude oil. By that procedure and the operation of these ends of the lines to the seaboard they undertook to prevent the common-carrier agent from making through rates—the reasonableness of which could be passed upon by the Federal Government—from the Appalachian field to the [fol. 1144] seaboard. Another purpose was to prevent the erection of independent and competing refineries upon the seaboard, which otherwise could be served by these common carriers.

The purpose in the mind of the Standard Oil Company is the purpose in the mind of all the other appellees who are refiners, namely, to monopolize the one single efficient method of transporting crude oil. To control the common-carrier lines they extend their own facilities far enough either to a field or to a connection with another pipe line to monopolize the oil business through their lines and thereby

prevent the establishment of competing refineries. What has been said with reference to the effect upon the other three appellees is equally true of the effect upon these three appellees. They may "withdraw" from the business, but, if they voluntarily elect to continue as common carriers, their pipe lines will be filled with traffic and they will be entitled to collect reasonable rates for the service. The only loss to them will be the monopoly occasioned by through private transportation. The only destruction occasioned by the act is the destruction of their monopoly.

Pipe lines carry all the traffic.—The pipe lines are carrying to-day the entire output of crude oil east of the Rocky Mountains. Under the act they will not carry less, because transportation by pipe line is so much cheaper than transportation by any other method that this instrumentality will continue to have a monopoly of the traffic. The companies [fol. 1145] operating these pipe lines, under the protection of the Federal law, will receive reasonable rates as compensation for the transportation service. There is, therefore, no destruction or impairment of property rights protected by the fifth amendment.

Weems case.—The case of *Weems Steamboat Co.* v. *Peoples Co.*, 214 U. S., 345, is the authority upon which the Commerce Court decided these cases. That was a suit between water carriers and did not involve in any sense, or to any degree whatever, a State or Federal enactment. In the *New York, New Haven case*, as we have seen, the question was the violation of the Federal law prohibiting discrimination. In *The Lottery case, Commodities Clause case*, and the *White-Slave act* the court was called upon to give effect to legislative acts. The distinction between such cases and the case of private litigation between private individuals or corporations is as wide as the poles, and the latter has no authoritative force or effect in determining the former. The one deals with purely private rights without any violation of express public law, and the other deals with the force and power of sovereignty; and legislation respecting the particular matter.

We respectfully submit, therefore, that this case has no determining effect in these cases.

The Commodity Clause case.—The act in that case, as construed by this court—

> forbade a railway company from transporting in interstate commerce articles or commodities (1) which

[fol. 1146] it has manufactured, mined, or produced; (2) which had been so mined, manufactured, or produced under its authority; (3) which it owns in whole or in part; and (4) in which it has an interest, direct or indirect.

U. S. v. *Lehigh Valley R. R. Co.*, 220 U. S., 257, 265.

The court held that the first two prohibitions, if literally construed, had no time limitation, and therefore any coal produced by or under the authority of the railroad company could not be shipped *at any time*. It was a total prohibition upon this traffic. No reason could be assigned for such a prohibition; there was nothing in the commodity or traffic that was objectionable. The court found that the purpose of that act was to *dissociate the business of transportation from the business of producing and buying and selling coal*. The *public welfare* called for the use of the coal, and therefore its shipment. If the coal was sold and disposed of by the railroad company before shipment, it would place the first two prohibitions upon the same basis as the last two prohibitions, namely, that no railroad company could ship coal which it had produced *and owned* at the time of shipment or which it had purchased and owned at the time of shipment. The grave constitutional question involved in the case was not whether great property losses prevented Congress from exercising its power to regulate commerce, but whether the total prohibition of a traffic absolutely devoid of any inherent evil or objection could be arbitrarily or [fol. 1147] capriciously forbidden by Congress where great property interests would be affected.

Legislative reason.—The whole line of decisions, from the *Brigantine William*, to the present time, recognized that there must be a proper balance between the power of Congress and the constitutional protection of property against arbitrary power. There must be *some reason* to support an act seriously affecting property rights apparent upon the face of the legislation. In the case of the embargo in 1808 the plain purpose of the act was to protect our commerce and aid in maintaining peaceful foreign relations. In the cases involving quarantine service the reason for such a prohibition was to prevent the spread of disease affecting health and property interests. In the *Lottery case* the prohibition was based upon a change of public sentiment regarding the morality of the business. All these questions of public

welfare are matters *within the consideration and discretion of the legislative branch* of the Government. In determining whether an act or prohibition is valid the court will inquire whether a reasonable cause for the legislation existed, but may not determine the extent or force of it as a cause operating upon the legislative will. Judge Davis stated it as follows:

> • • • Legal discretion is limited. It is thus defined by Lord Coke, *Discretio est discernere, per legem, quid sit justum.* Political discretion has a wider range. It embraces, combines, and considers all circumstances, events, and projects, foreign or domestic, that can affect [fol. 1148] the national interests. Legal discretion has not the means of ascertaining the grounds on which political discretion may have proceeded. It seems admitted that necessity might justify the acts in question. But how shall legal discussion determine that political discretion, surveying the vast concerns committed to its trust, and the movements of conflicting nations, has not perceived such necessity to exist? Considerations of this nature have induced a doubt of the competency or constitutional authority of the court to decide an act invalid in a case of this description.

As the two prohibitions in the commodity clause were not, if literally construed, sustained by any reasonable cause for their enactment, and such construction would result in absolutely destroying the coal so produced by preventing its transportation to market, the court adopted another construction, which it regarded as consistent with the two remaining prohibitions, *and gave effect to the statute.*

It will be observed, and it is very important in applying the case to the one at bar, that the railroad companies were prohibited from carrying on in the future a *legitimate business authorized by their charters*—transporting coal owned by them—and were thereby deprived of a clear property right, and it was held that the regulation was a constitutional exercise of the regulating power of Congress over that commerce. The movement of the coal was interstate. It was, therefore, a subject exclusively within the [fol. 1149] jurisdiction of Congress, and in making a regulation concerning the carriage of such commerce Congress could determine, and did determine, that it should not be

carried by the owner—that the agent of that commerce should be dissociated from the ownership—the reason for the regulation being that the combination of the business of mining, buying, and selling with transportation, tended to create undue discrimination against other shippers of coal. The fact that the deprivation of property rights in that case were great and grave did not prevent the court from holding, as it has always held, that the statute in this particular was constitutional. The court said:

> The question then arises whether, as thus construed, the statute was inherently within the power of Congress to enact as a regulation of commerce. That it was, we think, is apparent, and if reference to authority to so demonstrate is necessary it is afforded by a consideration of the ruling in the *New Haven case*, to which we have previously referred. We do not say this upon the assumption that by the grant of power to regulate commerce the authority of the Government of the United States has been unduly limited on the one hand and inordinately extended on the other, nor do we rest it upon the hypothesis that the power conferred embraces the right to absolutely prohibit the movement between the States of lawful commodities or to destroy the governmental power of the States as to subjects [fol. 1150] within their jurisdiction, however remotely and indirectly the exercise of such powers may touch interstate commerce. On the contrary, putting these considerations entirely out of mind, the conclusion just previously stated rests upon what we deem to be the obvious result of the statute as we have interpreted it; that it merely and unequivocally is confined to a regulation which Congress had the power to adopt and to which all preexisting rights of the railroad companies were subordinated. (*Armour Packing Co.* v. *United States*, 209 U. S. 56.)

We think it unnecessary to consider at length the contentions based upon the due-process clause of the fifth amendment. In form of statement those contentions apparently rest *upon the ruinous consequences* which it is assumed would be operated upon the property rights of the carriers by the enforcement of the clause interpreted as the Government construed it. For the purpose of our consideration of the subject it may

be conceded, as insisted on behalf of the United States, that *these contentions proceed upon the mistaken and baleful conception that inconvenience, not power, is the criterion by which to test the constitutionality of legislation.* * * *

U. S. v. *D. & H. R. Co.*, 213, U. S., 266, 415, 416.

This case is conclusive authority for our contentions in the case at bar. In designating the commerce to be regulated by the Lodge amendment, there is no limitation. It [fol. 1151] covers "*the transportation of oil* * * * *by means of pipe lines.*" It applies to *all transportation by pipe lines; that is, all movement of oil for commercial purposes through pipe lines and over State lines.* There is no limitation as to the persons or corporations that may be engaged as agents of such commerce. The statute plainly says: "That the provisions of this act shall apply to *any* corporation or *any* person or persons" so engaged, and here the court may not import into the statute any words of limitation. Congress has written in plain and unequivocal language that the regulation shall apply to *any* corporation or person and to *all* movement of oil through pipe lines. The act nowhere attempts to prohibit the transportation of oil. Oil owned by the agents of transportation may be carried. The only prohibition is that the transportation *by pipe lines* shall be carried on by common carriers under the act. This prohibition is in no sense greater or broader or more destructive of private business than was the commodity clause as construed and sustained by this court. Under that act the carrier can not transport coal owned by it at the time of transportation; in this act a private person or corporation can not transport oil *by pipe lines.* In the former case the moving cause of the legislation was to prevent undue discrimination and preferences among shippers; in the present case the moving cause of the legislation was to prevent a monopoly in crude oil. This restriction is applied only to *pipe lines;* all other instrumentalities are unaffected. [fol. 1152] The reason for the legislation is a proper one; it is as broad and as important a reason for regulation as is the prevention of discrimination and preferences. In fact, both reasons rest upon the same basic principle. Whether the popular prejudice against this monopoly in oil is well grounded the court may not inquire; that it was at the time of this legislation general and widespread no one

will deny, and the words of the Supreme Court in *Pearsall v. Great Northern Railway Company, supra,* heretofore quoted, are appropriate:

> We can not say that such prejudice is not well founded. It is a matter upon which the legislature is entitled to pass judgment. At least there is sufficient doubt of the propriety of such monopolies to authorize the legislature, which may be presumed to represent the views of the public, to say that it will not tolerate them unless the power to establish them be conferred by clear and explicit language.

Summary

In the final analysis this controversy may be summed up in the following proposition: Congress has power in regulating the interstate movement of oil through pipe lines to declare that it shall be moved only by common carriers under the act; the reason for such regulation is that the movement by private carriers tends to the creation of a monopoly in the commodity; therefore, as said by this court, "the conception that inconvenience, not power, is the [fol. 1153] criterion by which to test the constitutionality of the legislation" is "mistaken and baleful."

The decree of the Commerce Court should be reversed and the petitions dismissed.

Respectfully submitted, Charles W. Needham, Assistant Solicitor.

[fol. 1154] EXHIBIT "E"

To the Petition for Rehearing

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

No. 2721. Civil Action

INTERSTATE COMMERCE COMMISSION

vs.

TANK CAR OIL CORPORATION

This is a suit by the Interstate Commerce Commission as plaintiff, proceeding under the authority of the provisions of part 2 of the Interstate Commerce Act and section 322b

thereof (49 U. S. C. A. 322b), seeking to enjoin the defendant from operation as a distributor of gasoline without having obtained a certificate authorizing such operations as a motor carrier. A hearing has been had at which testimony was adduced, and the parties have argued the case by brief. The facts are found as follows:

Findings of Fact

The defendant is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business in Atlanta, Georgia. Defendant owns and operates twelve retail gasoline filling stations in and near Atlanta, Georgia, and controls four such retail stations in which it furnishes pumps, tanks and other equipment under an agreement whereby these stations agree to purchase their gasoline from the defendant. The defendant operates several tank trucks and tractor-tank transports, by means of which it purchases both within and without the State of Georgia and transports such gasoline as is necessary to keep its stations supplied with stock sufficient for its retail sales. This gasoline is purchased largely in Bir- [fol. 1155] mingham, Alabama, St. Marks and St. Joe, Florida, and at Chattahoochee, a distributing terminal of the Southeastern Pipe Line Company near Atlanta, Georgia. When and if defendant is able to purchase more gasoline than is required for the operation of the retail stations, he makes sales of tank truck lots at wholesale to other dealers in the State of Georgia. In the period between June 12, 1943 and the time when the complaint was filed, December 20, 1943, this being when it is alleged the defendant illegally transported in Interstate Commerce gasoline for compensation, the defendant bought 343 truck loads of gasoline. It used 168 truck loads in its own retail stations, and sold 165 truck loads at wholesale to its controlled stations and other customers.

The complaint alleges eleven claimed illegal acts of transportation, and which are contended by the defendant were actual wholesale sales of gasoline. Proof was introduced of a statement by the managing officer of the defendant made to a representative of the plaintiff, and of testimony of two of the purchasers of the gasoline included within the eleven specified transactions.

During the period under investigation, an acute shortage of gasoline existed because of war conditions and the infer-

ence is clear that no dealer had on hand at all times sufficient stock to supply all demands.

The price at which the defendant made his sales to customers varied in proportion to the distance of delivery, but the defendant's testimony that the sales were made to meet [fol. 1156] competitive conditions is not contradicted. The difference between the price paid by the defendant at the terminal at Birmingham, and the price received from his wholesale purchasers, is slightly in excess of the contract hauler's freight rate for a haul from Birmingham to the place of ultimate delivery. However, the evidence discloses that the defendant took delivery of a considerable portion of his aggregate purchases from the terminal at Chattahoochee, Georgia, and plaintiff made no attempt to prove that there was any difference in the delivered price of this gasoline to customers close at hand and that secured on the delivery of gasoline purchased at Birmingham which involved a considerable haul.

The Court finds that in essence the transactions complained of, and the general business of the defendant was, that the defendant was engaged primarily in transporting gasoline to supply the needs of its retail stations, and that when in the course of business it was able to and could secure gasoline in excess of the amount required for such purpose, it would dispose of such excess by completing a sale theretofore made. At times such excess would be on the yard at the time of sale, but in the majority of cases gasoline would have to be purchased by the defendant in order to fulfill the prior order.

Sometimes defendant would take the order and agree to deliver at the time in the future desired by the purchaser; at others, and the more frequently, it would require from two to fifteen days for delivery. At some times the defendant would merely state to the prospective purchaser that [fol. 1157] it did not have any gasoline, but would get it as soon as possible. Defendant had no storage tanks. The truck would be sent to the terminal, either at Birmingham, St. Marks or Chattahoochee, with a check filled out but with the amount blank, and the terminal operator or seller would fill in the amount of the purchase price of the gasoline and invoice the same to the defendant, the load would be taken to the defendant's office in Atlanta and invoiced by the defendant at the sales price to the wholesale customer, and the truck then dispatched to such customer who would at

that time deliver to the driver of the truck, or within a few days thereafter mail, a check to the defendant for the invoice price at which the gasoline had been sold to such customer. The gasoline was purchased by the defendant at the terminal at a price per gallon, plus State and Federal taxes, and was invoiced by the defendant to his customer at a price of so many cents per gallon, and in some instances at a price per gallon, plus taxes. The purchasers from the defendant bought the gasoline F. O. B. their station at an agreed price per gallon which included freight and Federal and State taxes, and to use the words of a witness, "did not know and did not care" where the gasoline came from. From the invoices introduced in evidence, it appears that as to the transactions with the two purchasers chiefly relied upon, the gasoline was transported from Birmingham, Alabama, and as to these, while the price received by the defendant from its purchasers was as to each sale the same, the corresponding purchases at the terminal upon occasions varied by as much as .37 of a cent per gallon.

[fol. 1158] The defendant was concerned in the transportation to the extent that it enabled it to keep its trucks in full operation, and such wholesale sales of gasoline not needed in the conduct of its retail business earned for defendant additional profits, in the earning of which it was necessary that the defendant buy and transport the gasoline. Under present conditions, all gasoline was readily salable, and even if the same had not been secured in fulfillment of prior orders, could have been disposed of in the defendant's trade area without storage in bulk.

The plaintiff fails to show by a preponderance of the evidence that as to any transaction there was other than a bona fide sale of gasoline F. O. B. the purchaser's station, in which the purchaser was buying gasoline and was not concerned in the price or cost of transportation. The plaintiff does not show by a preponderance of the evidence that in case of the majority of the sales by the defendant at wholesale, the gasoline was purchased by the defendant after a sale of the approximate or equivalent gallonage to his customer.

In an application in February, 1943, before the alleged illegal transportations beginning June 12, 1943, to the office of Defense Transportation for authority to purchase additional equipment, defendant stated the need of such new equipment to be because it was "unable to buy or lease any

transport equipment. The equipment we now have is busy continuously and we are unable to keep up with orders on hand * * * our operation is the transportation of gasoline from the Southeastern Pipe Line Terminal to jobbers [fol. 1159] and gasoline agents in Georgia and South Carolina. It is our understanding that the Southeastern Pipe Line is approximately 200 orders behind. With the addition of this new piece of equipment we will be in a position to serve quite a number of additional agents." Following the denial of this application, in a letter seeking reconsideration, defendant stated: "As specified * * * we have been requested by the Republic Oil Company, the Southeastern Pipe Line Company, the Southport Gasoline Company, the National Oil Company, The Shell Oil Company, the Sinclair Oil Company and the Cities Service Company for equipment to transport gasoline in this area. All of these requests we were forced to refuse."

The defendant has failed to keep a driver's log in duplicate as required by the regulations of the Interstate Commerce Commission, and has likewise failed to secure or have in its files a certificate of physical examination signed by a qualified Doctor of Medicine for every new driver entering its employment as required by such regulations.

Defendant has not secured a certificate of public convenience and necessity from the Interstate Commerce Commission, nor has it filed policies of insurance or other security as required by the statute, nor has it filed with the Interstate Commerce Commission any rate or charge applicable to the transportation of property, or any minimum charge for such transportation of property.

[fol. 1160] DISCUSSION

Complainant contends that the decision in this case is upon the facts controlled by the rule in the case of A. W. Stickle Company v. Interstate Commerce Commission, 128 F. 2d 155. In addition, complainant urges the accepted rule that the Interstate Commerce Act is entitled to a liberal construction to effectuate the policy of the Act, and further, the established rule that the courts will look beyond the actual form of the transaction in determining whether questioned operations are those of a common or contract carrier, or private carrier. A. W. Stickle Company case, supra, and Georgia Truck System, Inc., v. Interstate Commerce

Commission, 5 Cir., 123 F. 2d 212. It also urges the accepted principle that interpretation of the statute by the Interstate Commerce Commission, the agent charged with its enforcement and operation, is entitled to great weight.

Upon consideration of the matter it appears that the real question for determination by this court is the actual nature of the transaction involved rather than a determination of the law, for if the operations of the defendant are those of a common or contract carrier, the complainant is entitled to the relief of injunction as sought. The Stickle case does not afford much help in determining the proper result in the present case. There the trial court found the circumstances of the transactions involved were transportations for compensation and that the Stickle Company was a common carrier. The Court of Appeals determined that there was sufficient evidence to sustain the finding [fol. 1161] under the facts in the case and thereupon held that the operations of the defendant were those of a contract carrier. The difference in the classification of the operations of the defendant by the trial court as those of a common carrier, and that of the Circuit Court of Appeals as those of a contract carrier, as well as the failure of the complainant in the present case to contend for any definite classification except that the defendant is not a private carrier, well illustrates that the difficulty inhering in the determination of any such a case is properly ascertaining the facts as to the actual circumstances of the operations, rather than a determination of the law. In the Stickle case the courts determined, under the facts there present, that the defendant was in fact engaged in the transportation of property for hire as a carrier. With this fact established, as a matter of law, the defendant became subject to all of the regulatory provisions of the statute including the proper subjection to an injunction by the court to prevent any violation thereof. The same court in Interstate Commerce Commission v. Clayton, 127 F. 2d 967, on the day prior to the decision in the Stickle case, held upon the facts there presented that the operations of the defendant were those of a private carrier. Thus each case must be determined by its own facts.

In this case, no extended discussion of the law involved is deemed necessary. Full findings of fact have been made.

As to the law, before the complainant is entitled to the [fol. 1162] injunctive relief sought, it is necessary for it to convince this court that the operations of the defendant was "transportation for compensation as a common or a contract carrier," as held by the Interstate Commerce Commission in T. J. McBroom Contract Carrier Application 29370, 1 M. C. C. 425. This appears to be an excellent statement of the test. Thus, not that the transportation might result in compensation as a matter of profits to the seller or transporter, but that the effect of the transaction is compensation as a common or contract carrier. In the Stickle case the court found transportation for such compensation. In the present case, while the court finds that the transportation resulted in profits to the defendant, that is, that it was necessary to transport in order to earn the profit, nevertheless I am unable to find, under the evidence, that there was involved in the transportation any idea of freight or carrier charges. Under the undisputed and uncontradicted evidence, it made no difference where the shipment originated, the cost to the purchaser was the same. I do not believe that the fact that profit, or compensation, may accrue as a result of transportation is a sufficient test, for if that be so, one who lost money as a result of deliveries for fixed freight charges would not be a carrier. The real question in any case to be determined is, looking beyond the form of the transaction and to its circumstances, whether the transportation is for compensation as a common or contract carrier, or whether such transportation is incidental to the operation of a commercial enterprise. In this connection, I find nothing in the statute which prohibits the conduct [fol. 1163] of a bona fide wholesale business, even if transportation is usually and even exclusively employed as a means of its conduct, provided the operation does not in fact place the operator within the classification of a common or contract carrier. Thus the fact that the defendant used no storage tanks, in itself does not subject it to the provisions of the statute.

It is true that ownership of the goods transported is not the sole test whether one is a private carrier or otherwise. However, where bona fide ownership is shown, that fact is, under the definition of private carrier contained in the statute, entitled to considerable weight. And where bona fide ownership is shown, together with a failure to prove transportation for compensation as a common or a contract

carrier, no proper basis exists for classification as a common or contract carrier. Indeed, this does not appear to be seriously questioned by the complainant, its contention is that the profit on the f. o. b. sales of the gasoline is the substantial equivalent of transportation charges between the points involved in the eleven transactions proved in detail, and that this, together with the evidence that the defendant always had an order before he purchased to fill it, shows that in essence the transaction was a subterfuge to evade the requirements of the statute. In view of the testimony from the complainant's witnesses that they purchased gasoline f. o. b. their stations, and neither knew nor cared from whence it came, and the testimony in behalf of the defendant that the prices charged were based upon competitive conditions in the respective localities, the in-
[fol. 1164] ference sought to be drawn by the complainant is not entitled to the weight claimed for it. This is not a case where the business relates solely to transportation and wholesale sales. It is shown by the evidence that more than half of the gasoline transported by the defendant was delivered to its retail stations and there sold. As to this portion of the business it is conceded by the complainant that the operations were those of a private carrier. Under the facts here I can find no substantial difference between such transportation for sale at retail and the transportation for sale at wholesale, and accordingly conclude that the complainant has failed to show that in its wholesale operations the defendant is either a common or a contract carrier.

Complainant relies heavily upon a statement made by the general manager of the defendant in which he admits that "we transport a spasmodic load now and then for somebody who calls in." Considering this statement in its context, and in connection with the evidence adduced upon the trial, I am unable to predicate thereupon a finding that the defendant's operations were the transportation of gasoline for compensation. The statement in its application to the Office of Defense Transportation that it had been requested to transport for various companies, is likewise not proof that it had been transporting, for it did not secure the additional equipment simultaneously stated to be necessary to carry on such operations.

[fol. 1165] In none of the decisions of the Interstate Commerce Commission cited and relied upon in the argument

here were the facts similar to those here involved, and in them the element of transportation for compensation as a common or contract carrier clearly appeared.

There lurks in the background of this case circumstances which give rise to a suspicion that some operations of the defendant may be different than those disclosed by the evidence presented. However this suspicion is not sufficient to override the positive testimony in the record. Nor, being in opposition thereto, does it aid in establishing complainant's case by a preponderance of the evidence.

From the statements made, it is apparent that there are other cases of a similar nature pending, and as the case will doubtless be appealed for final adjudication, no further discussion is necessary.

With reference to the matter of keeping of driver's logs and record of medical inspection, it is clear from the evidence that the defendant has failed to comply with the terms of the statute and regulations thereunder which are applicable to private carriers, and as to these matters, the complainant is entitled to an injunction to secure compliance with such statute and regulations. An order providing therefor may be presented.

[fol. 1166] CONCLUSIONS OF LAW

This court has jurisdiction of the parties and the subject matter.

The operations of the defendant are not subject to the provisions of the Motor Carrier Act so as to require it to obtain a Certificate of Convenience and Necessity, to file a tariff or statement of its minimum charges, or to file with the Commission the insurance or the filing and approval of surety bonds, qualifications as a self-insurer, or other securities or agreements by motor carriers subject to said Act, duly prescribed by said Commission pursuant to the provisions of Section 215 of said Act.

The complainant is entitled to an injunction to restrain the defendant from violating the Motor Carrier Act by failing to keep and preserve driver's logs and certificates of medical doctors certifying to the good health of the drivers employed.

Defendant should be taxed one-half of the costs of this proceeding.

Let a decree be presented by the plaintiff upon notice effectuating these conclusions of law.

This the 31st day of January, 1945.

(S.) Robert L. Russell, United States District Judge.

Filed in Clerk's office February 2, 1945. F. L. Beers, Clerk. By Ruth M. Stilwell, Deputy Clerk.

[fol. 1167] EXHIBIT "F"

To the Petition for Rehearing

No. 25

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1939

VALVOLINE OIL COMPANY, Appellant,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

Appeal from the District Court of the United States for the Western District of Pennsylvania.

Brief for the United States and the Interstate Commerce Commission

[fol. 1168] INDEX

	Original Folio
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	3
The proceedings	3
The evidence	6
Summary of argument	11
Argument:	
Introductory statement	17
I. Valvoline is subject to the Interstate Commerce Act under the provisions of Sections 1 (1) (b) and 1 (3)	20

	Original Print
II. The order of the Commission does not impair the constitutional rights of appellant:	
1. The only constitutional issue presented is the validity of Section 19a (e)	31
2. Considered by itself, Section 19a (e) does not impair the constitutional rights of appellant	37
3. The principal regulatory provisions of the Act are constitutional as applied to the appellant	37
Conclusion	47
Appendix A	48
Appendix B	53

Citations

Cases:

Alton R. Co. v. *United States*, 287 U. S. 229 19
Ashwander v. *Tennessee Valley Authority*, 297 U. S. 288 15, 33, 34
Blackmer v. *United States*, 284 U. S. 421 36
Brass v. *Stoeser*, 153 U. S. 391 43, 46
Budd v. *New York*, 143 U. S. 517 44
California v. *Latimer*, 305 U. S. 255 12, 15, 17, 18, 33
Carmichael v. *Southern Coal & Coke Co.*, 301 U. S. 495 45
Electric Bond & Share Co. v. *Securities and Exchange Commission*, 303 U. S. 419 15, 18, 33, 35, 37
Hatch v. *Reardon*, 204 U. S. 152 36
Heald v. *District of Columbia*, 259 U. S. 114 15, 35, 36
Interstate Commerce Commission v. *Goodrich Transit Co.*, 224 U. S. 194 19, 27
[fol. 1169] *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571 15, 35, 36
Munn v. *Illinois*, 94 U. S. 113 44
Myers v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41 12, 17
National Labor Relations Board v. *Fainblatt*, 306 U. S. 601 16, 39

	Original Print
Nebbia v. *New York*, 291 U. S. 502	46
Norfolk & Western Ry. Co. v. *United States*, 287 U. S. 134	19
Pennsylvania R. R. Co. v. *Public Utilities Commission of Ohio*, 298 U. S. 170	39
Petroleum Exploration, Inc. v. *Public Service Commission*, 304 U. S. 209	12, 17
Pierce Oil Co. v. *Phoenix Refining Co.*, 259 U. S. 125	16, 41
The Pipe Line Cases, 234 U. S. 548	12, 13, 16, 19, 20, 22, 23, 24, 26, 27, 30, 38, 39, 40, 43, 53
Prairie Oil & Gas Co. v. *United States*, 204 Fed. 798	54
Premier-Pabst Sales Co. v. *Grosscup*, 298 U. S. 226	35
Purity Extract Co. v. *Lynch*, 226 U. S. 192	45
Rochester Telephone Corp. v. *United States*, 307 U. S. 125	18
South Carolina State Highway Department v. *Barnwell Bros., Inc.*, 303 U. S. 177	45
Standard Oil Co. v. *United States*, 221 U. S. 1	53
Tidewater Pipe Co. v. *Board of Review*, 311 Ill. 375, 143 N. E. 87	27
United States v. *Carolene Products Co.*, 304 U. S. 144	45
United States v. *Hill*, 248 U. S. 420	16, 39
United States v. *Los Angeles R. R.*, 273 U. S. 299	18
United States v. *Simpson*, 252 U. S. 465	16, 39
United States v. *Uncle Sam Oil Co.*, 234 U. S. 548	29
Yazoo & M. V. R. Co. v. *Jackson Vinegar Co.*, 226 U. S. 217	15, 35, 36

Statutes:

Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 210-219, U. S. C. Title 28, Secs. 47, 47 (a)	4, 18
Revenue Act of 1918, Sec. 500 (d), c. 18, 40 Stat. 1055, 1103	21
Transportation Act, 1920, c. 90, 41 Stat. 453, 456	23
Revenue Act of 1932, c. 209, Sec. 73 (a), 47 Stat. 169, 275	21

Original Print

Interstate Commerce Act (Feb. 4, 1887, c. 104, 24 Stat. 379, as amended; U. S. C. Title 49, Secs. 1, 19a).
Sec. 1 ..... 3, 12, 21, 35, 48
Sec. 19a 2, 3, 4, 15, 16, 18, 31, 32, 34, 35, 36, 37, 50

Miscellaneous:

40th Cong. Rec. 6361, 6365-6366, 7000 ..... 54, 55, 56, 57
Conference Report No. 546, to accompany H. R. 10453, 66th Cong., 2d Sess. 24
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[fol. 1170] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1939

No. 25

VALVOLINE OIL COMPANY, Appellant,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

Appeal from the District Court of the United States for the Western District of Pennsylvania

Brief for the United States and the Interstate Commerce Commission

Opinion Below

The opinion of the specially constituted District Court (R. 112-120) is reported in 25 F. Supp. 460. The reports of the Interstate Commerce Commission, upon which the challenged order is based (R. 12-19, 23-31), are published in 47 Val. Rep. 534 and 48 Val. Rep. 10.

Jurisdiction

The final decree of the District Court was entered December 29, 1938 (R. 120). Petition for appeal was filed Feb-

ruary 20, 1939 (R. 126), and was allowed the same day [fol. 1171] (R. 126-127). Jurisdiction of this Court is invoked under the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210-219, U. S. C., Title 28, Secs. 47 and 47 (a)), and under Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, U. S. C., Title 28, Sec. 345). This Court noted probable jurisdiction on April 17, 1939.

Questions Presented

1. Is appellant subject to the Interstate Commerce Act under the provisions of Section 1 (1) (b) and 1 (3)?

2. If appellant is subject to the Act, are its constitutional rights invaded by an order of the Interstate Commerce Commission, issued under Section 19a (e), requiring it to furnish certain information?

3. May appellant question the validity of provisions of the Act other than Section 19a (e); and if so, are they constitutional as applied to it?

Statutes Involved

The provisions of the Interstate Commerce Act (February 4, 1887, c. 104, 24 Stat. 379, as amended; U. S. C., Title 49) primarily involved are found in Sections 1 (1), 1 (1) b, 1 (3), 19a (a) and 19a (e), which provide in part as follows:

> Sec. 1. (1) That the provisions of this part shall apply to common carriers engaged in—
>
> • • • • • • •
>
> [fol. 1172] (b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; • • •.
>
> (3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire.
>
> • • • • • • •

> Sec. 19a. (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part • • •
>
> (e) Every common carrier subject to the provisions of this part shall furnish to the Commission or its agents from time to time as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier • • •.

Other pertinent provisions of the Interstate Commerce Act are set out in Appendix A, *infra*, pp. 48-52.

Statement

1. The Proceedings.—This is an appeal from the final decree of a three-judge district court for the Western Dis- [fol. 1173] trict of Pennsylvania, convened under the Urgent Deficiencies Act (c. 32, 38 Stat. 210-219, U. S. C., Title 28, Secs. 47, 47 (a)), dismissing for want of equity a petition to enjoin and annul an order of the Interstate Commerce Commission entered June 6, 1938. The order required appellant, hereinafter referred to as "Valvoline," to file with the Commission within a specified time certain maps, charts, and schedules required for the valuation of its pipeline property under Section 19a of the Interstate Commerce Act.

The order was issued under the following circumstances:

Pursuant to its statutory duty "to investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions" of the Interstate Commerce Act,[1] the Commission had, on December 31, 1934, issued "Valuation Order No. 26—Revised" (R. 9-10); requiring all pipe-line companies subject to the Act to prepare and file with the Commission maps, charts, and schedules of their properties not less than sixty days after receiving written notice from the Director of the Commission's Bureau of Valuation. Served

[1] Section 19a of the Interstate Commerce Act, *infra*, p. 50.

with this notice in January 1936, Valvoline asserted that it was not subject to the Act and petitioned the Commission [fol. 1174] to determine its status (R. 1). The Commission granted the petition and, after full hearing before Division 1, issued a report dated February 2, 1937 (R. 12-19), holding that Valvoline is "engaged in the transportation of oil by pipe line in interstate commerce and that it is a common carrier subject to the provisions of the Interstate Commerce Act," and "should, therefore, comply with our Valuation Order No. 26 and furnish promptly the information called for therein" (R. 19).

Evidence at this hearing disclosed that Valvoline was transporting crude oil in interstate commerce both for the use of its own refinery and for sale to an independent refining company in West Virginia (R. 42, 43). Shortly after the date of the Commission's report, Valvoline, admittedly in order to avoid being held to be a common carrier (R. 54), mechanically rerouted the oil transported to the West Virginia refinery (R. 62) so that this refinery was thereafter furnished only with oil produced in West Virginia and not moved across state lines.

Thereupon Valvoline petitioned for a rehearing alleging that this change in its operation was material to the determination of its status (R. 20). The petition was granted and a hearing was held before the full Commission. On June 6, 1938, the Commission rendered its report (R. 23-31) holding that the change in operation did not affect its prior [fol. 1175] determination, and directing Valvoline to comply with "Valuation Order No. 26—Revised" within ninety days (R. 31).

Valvoline thereupon instituted this suit, seeking both an interlocutory and a permanent injunction against enforcement of the order (R. 1-8). The Commission intervened and filed an answer (R. 36, 37). By agreement of counsel and with the court's consent, a single hearing was held on the prayer for both a temporary and a permanent injunction. Valvoline introduced in evidence a certified transcript of the testimony and exhibits introduced at both hearings before the Commission. No other evidence was offered. On December 6, 1938, the court below filed its opinion, findings of fact, and conclusions of law (R. 112-120), holding that Valvoline is subject to the Interstate Commerce Act and that it is required to comply with the

Commission's order. The final decree dismissing the petition was entered on December 29, 1938 (R. 120). On January 3, 1939, the court below stayed enforcement of the Commission's order pending decision by this Court (R. 124-125).

2. The Evidence.—The material facts, which are not in dispute, are as follows:

Valvoline's business originated in a partnership formed more than seventy years ago for the purpose of manufacturing lubricating oil. A small pipe line was constructed near Warren, Pennsylvania, through which oil was gath- [fol. 1176] ered for shipment in tank cars to the company's refinery at Edgewater, New Jersey. Later a refinery was built at Warren, and some of the oil was refined there and some at Edgewater. In 1901 the company was incorporated under the laws of the State of New Jersey and by its charter was authorized to engage in the production, manufacture, and marketing of petroleum oil and its products, and to engage in "any transportation business of any kind or character whatsoever," without, however, the right of eminent domain in New Jersey. At the time of its incorporation Valvoline was refining about 22,000 barrels of oil per month (R. 89, 113).

As the demand for lubricating oil grew, the pipeline system was gradually extended southward, following the development of new oil fields in Pennsylvania, and in 1909 another and larger refinery was added at East Butler, Pennsylvania. The movement of oil in that year amounted to about 55,000 barrels per month (R. 90, 113).

Up to that time all of the oil transported by Valvoline by pipe line moved intrastate. Interstate transportation began in 1913 upon the extension of the line from Pennsylvania into West Virginia, and in 1916 the West Virginia-Ohio boundary was crossed. The last major additions were in 1925 and 1926 when a gathering system serving pools in Ritchie County, West Virginia, was purchased and lines were laid in southeastern Ohio (R. 113).

[fol. 1177] At the present time Valvoline operates a connected system of pipe lines in Pennsylvania, Ohio, and West Virginia of a total length of 1,426 miles, comprising 969 miles of 2-inch pipe, 426 miles of 3-inch pipe, and 31 miles of 4-inch pipe (Exhibit 15). Through these lines it transports approximately 75,000 barrels of oil per month (R. 65), of which approximately 50% moves across state

lines. About 50% of the oil transported originates in Pennsylvania, 38% in West Virginia, and 12% in Ohio (R. 48, 113).

Several other oil pipe lines, both common carrier and private, extend through, or in close proximity to, the fields served by Valvoline. The common carriers have trunk lines of from 3 to 12 inches in diameter and carry a much larger volume of oil than is transported by Valvoline. None of them, however, serves the wells from which Valvoline receives its oil (R. 45, 113-114.)

Valvoline is not a producer of oil. From the inception of the enterprise it has been its practice to purchase all of the crude oil which it uses directly from the producers in the field and to carry in its pipe lines only oil of which it is the owner (R. 48, 114).

For its manufacturing purposes Valvoline prefers a select grade of oil of a light amber color. Some of the oils produced along its pipe lines are not satisfactory because they are too dark or contain undesirable ingredients difficult to eliminate in the refining process. It refuses to buy or admit into its lines oils that do not meet its [fol. 1178] specifications and the producers of such oil must, therefore, find an outlet through other pipe lines and sales to other refineries. Several instances of rejections of oil by Valvoline are mentioned in the record (R. 43, 46). However, any producer within reasonable distance of Valvoline's lines, having oil of the desired quality and not already receiving pipe-line service, is afforded a market for its oil through sale to Valvoline. One officer of the company testified (R. 43): "We have never rejected a well producing the kind of oil we need," and another stated (R. 47): "Once we have connected with a well which produces oil of the quality we desire, we handle all of the oil produced if he wants to give it to us." Valvoline pays the posted market price for the oil it purchases, except that producers whose wells are located in Ohio or West Virginia, or in Pennsylvania south of the Butler-Allegheny County line, receive a premium of 5 cents per barrel over this posted price (R. 45, 114).

In November 1937 Valvoline's pipe lines were serving exclusively 9,020 wells. These were mostly so-called stripper wells of small output, the average daily run for all of the wells being less than half a barrel per day per well. In the purchase of the output of these wells, Valvoline has

dealings with and accounts to 2,014 royalty owners and 1,751 lease operators. These owners and operators have no other present outlet for their oil. In the event Valvoline should refuse to accept it they could receive service [fol. 1179] from one of the other pipe-line companies but only if they were able to tender at least 5 barrels per day per mile of pipe-line extension necessary to make the connection. Since the average run of oil from the wells is much less than this amount, this requirement would deprive many of the producers of a pipe-line outlet and a market for their oil, should Valvoline refuse to carry it (R. 58, 114-115).

In 1932 economic conditions brought about a curtailment of operations, and the refinery at Warren was closed. Valvoline, instead of limiting its purchases to the quantity of oil that could be refined at East Butler, continued as before to purchase all oil of suitable grade offered in order not to lose the good will of the producers (R. 47). The result was that it received, and has continued to receive, an excess of oil over its ability to refine. Having no use for this oil in its own operations, it entered into arrangements with the Pennsylvania Refining Company at Karns City, Pennsylvania, and with the Ohio Valley Refining Company at St. Marys, West Virginia, under which it sells and delivers to those companies the excess of oil over its own requirements. The oil sold to the Pennsylvania Refining Company all originates in Pennsylvania, and its movement through Valvoline's lines is intrastate. At the time of the first hearing before the Interstate Commerce Commission some of the oil sold to the Ohio Valley Refin- [fol. 1180] ing Company originated in Ohio and moved across the Ohio-West Virginia State line. After that hearing, admittedly in order "to avoid any question of our status being held as a common carrier" (R. 54), Valvoline altered its operations so that oil delivered to this refinery consists exclusively of oil originating in West Virginia.[2]

---

[2] This change was effected by a simple mechanical process. The oil from Ohio is periodically held up in a tank at Bens Run, West Virginia, until oil for the West Virginia refinery can be pumped in the opposite direction from the West Virginia lines. When delivery is completed, the Ohio oil is released, mingled with West Virginia oil, and later with Pennsylvania oil, and transported to the Valvoline refinery at East Butler (R. 62).

In the case of both refineries the oil is sold at delivered prices, which include amounts to cover the cost of transportation (R. 51, 115).

Valvoline has never exercised the right of eminent domain. Its pipe lines have been laid over privately acquired easements and rights-of-way (R. 44). The arrangements under which it has laid its lines across public highways, rivers, and lines of other carriers do not appear of record.

Valvoline has never filed tariffs or reports with the Interstate Commerce Commission or with any other regulatory body (R. 50).

Summary of Argument

In three recent decisions this Court has held that the expense of furnishing information of the type required of [fol. 1181] appellant by the Commission's order does not constitute such substantial and irreparable injury as to justify equitable relief. *Petroleum Exploration, Inc.* v. *Public Service Commission*, 304 U. S. 209; *California* v. *Latimer*, 305 U. S. 255; *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41. Since this expense is the only injury of which appellant may complain, its suit should be dismissed if it is governed by the ordinary principles of equitable jurisdiction. This Court has never decided, however, whether those principles apply to a suit which is brought under the Urgent Deficiencies Act to review an order of the Interstate Commerce Commission. It appears to have been general practice for a number of years to assume that the courts have jurisdiction over such a suit if only the order involved is final and the petitioner has a legal right or interest injuriously affected thereby. In view of this circumstance and because, in the opinion of the Interstate Commerce Commission, administrative convenience will be served by review of the particular order here involved, the Government does not insist upon this preliminary jurisdictional question but seeks a decision on the merits.

I

That appellant is subject to the Interstate Commerce Act under the provisions of Sections 1 (1) (b) and 1 (3) is clear both from the language of the Act and from the decision of this Court in *The Pipe Line Cases*, 234 U. S. 548. The Act [fol. 1182] applies to "common carriers engaged in • • • transportation of oil • • • by pipe line" between the

states, and "common carrier" is defined as including "all pipe-line companies." Since Valvoline is a pipe-line company engaged in the interstate transportation of oil, it comes directly within the statutory definition. Valvoline's contention that the Act applies only to those already engaged in pipe-line transportation as common carriers finds no support in the language of the statute and is precisely the argument which this Court rejected in *The Pipe Line Cases*, 234 U. S. 548. While the applicable sections of the Act have been amended in minor details since that decision, the amendment simply clarifies the language of the statute and does not make any important change in policy. Indeed, the Act as amended even more clearly applies to appellant than it did prior to its revision.

The further contention that *The Pipe Line Cases* are not decisive because appellant's operations differ from those of the companies there involved cannot be maintained. That decision was premised upon the principle that the provisions of the Act "apply to any person engaged in the transportation of oil by pipe line." Moreover, the Court there sustained the Act in its application to Tidewater Pipe Company, Ltd., whose operations were essentially the same as those of Valvoline.

Any lingering doubt that appellant is subject to the Act is dispelled by the legislative history of the statute which [fol. 1183] conclusively shows that the very two factors upon which Valvoline principally relies to exempt its operations from the Act—its common ownership and control of refinery and pipe line and its policy of transporting no oil other than its own—were the fundamental cause of the mischief at which the statute was directed.

II

There is no dispute that, if Valvoline is subject to the Act, the Commission had statutory authority under Section 19a (e) to enter the order here contested. The issue as to the validity of the order relates solely to its constitutionality.

Appellant argues that in deciding this issue the validity of the entire Act must be determined. It asserts that the order serves to change its status from that of a private to that of a common carrier, and thus can be supported only if Valvoline can constitutionally be required to assume the obligations of a common carrier under the Act. Moreover, it asserts that Section 19a (e) is inseparable from the

principal regulatory provisions of the Act and that if those provisions fail Section 19a (e) must likewise fail.

We take issue with appellant on both propositions. The Commission's order does not change appellant's status at all; it simply recognizes appellant to be a pipe-line com-[fol. 1184] pany subject to the Act. It is the Act, not the order, which determines appellant's obligations. The Commission has taken no action with respect to Valvoline under any provision other than Section 19a (e) and may never be called upon to take such action. Appellant itself admits that it cannot now be predicted in what manner or how seriously it may be affected by the requirements of the Act. Under these circumstances, a decision on the constitutionality of the entire statute would be an advisory opinion upon a hypothetical state of facts. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324; *Electric Bond and Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419; *California* v. *Latimer*, 305 U. S. 255.

The question is not affected by the separability or inseparability of Section 19a (e). Whether that Section is separable in the sense that it could stand alone if the remainder of the Act were held invalid, need not now be determined; whether separable or not, the present exercise of authority under that Section cannot be invalidated on the ground that at some future time appellant's rights may be invaded in the administration of other sections of the Act. Appellant may contest the validity of only that provision which presently causes it injury. *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571; *Heald* v. *District of Columbia*, 259 U. S. 114; *Yazoo & M. V. R. Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217.

[fol. 1185] Since Section 19a (e) is admittedly valid in its application to appellant, we believe that the decree below must necessarily be affirmed.

Affirmance is required even if it be held that appellant has standing in this proceeding to question the validity of sections of the Act not now affecting it. There can be no dispute that Valvoline is engaged in interstate commerce; that it transports its own oil over its own lines does not prevent that transportation from being interstate commerce or exempt it from federal regulation. *The Pipe Line Cases*, 234 U. S. 548; *United States* v. *Hill*, 248 U. S. 420; *United States* v. *Simpson*, 252 U. S. 465; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601. Nor can there be

doubt that the regulation imposed upon that commerce by the Pipe-Line Amendment does not constitute a violation of due process. In *The Pipe Line Cases, supra*, p. 561, this Court said: "So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid." See also *Pierce Oil Co.* v. *Phoenix Refining Co.*, 259 U. S. 125. Since Valvoline did not commence interstate transportation of oil by pipe line until after the effective date of the Pipe-Line Amendment, these decisions are decisive of its validity as applied to appellant.

Even apart from this consideration, no violation of due process is involved. The purpose of the statute—to free the channels of interstate oil transportation from abuses [fol. 1186] which had arisen through common control of pipe line and refinery—is clearly within the Congressional competence, and the provisions of the Act as applied to ap-ellant have a real and substa*n*tial relation to that object.

Argument

Introductory Statement

Appellant presents the contentions in its brief that it is not subject to the provisions of the Interstate Commerce Act and that, if it is, the Act as applied to it is unconstitutional. We believe both contentions to be demonstrably unsound and that the decision below on the issues so posited is clearly correct.

Before proceeding to discuss these issues, however, a preliminary point of equity jurisdiction must be considered. In three recent decisions this Court has held that the expense of furnishing information of the type required of appellant by the Commission's order does not constitute such substantial and irreparable injury as to justify equitable relief.[3] *Petroleum Exploration, Inc.* v. *Public Service*

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[3] The only allegation of the petition with respect to the expense of furnishing the information is that it would require the "expenditure of large sums of money" (Petition, Par. IX, R. 7), and the only direct testimony on the question is the statement of appellant's vice-president that "It would mean a terrific expense to gather this information" (R. 65).

Commission, 304 U. S. 209; *California* v. *Latimer*, 305 U. S. 255; *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41. [fol. 1187] Since this expense is the only injury of which appellant may complain in the present case,[4] its suit should be dismissed if standing to maintain the suit depends upon the ordinary principles of equitable jurisdiction.

The question whether the ordinary prerequisites of equitable relief apply to a proceeding under the Urgent Deficiencies Act (38 Stat. 210, U. S. C., Title 28, Secs. 45, 47) to review an order of the Interstate Commerce Commission has never been determined by this Court. In several cases the Court has indicated that such a proceeding is equitable in nature. See *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 132; *United States* v. *Los Angeles R. R.*, 273 U. S. 299, 315. In the *Rochester Telephone case* the [fol. 1188] Court stated (p. 132) that, where review is sought under the Urgent Deficiencies Act of an order of the Interstate Commerce Commission denying complainant's claim that is not within the statute, the complainant to secure relief must show "the conventional requisites of equity jurisdiction." Moreover, in *Alton R. Co.* v. *United States*, 287 U. S. 229, 240, Mr. Justice Brandeis, holding that the order there involved was reviewable under the Urgent

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[4] There can be no contention that the mere existence of the statute (enacted in 1906) creates presently threatened irreparable injury. See *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419. Nor, as pointed out below, can it be maintained that the Commission's order serves to change appellant's status from that of a private to that of a common carrier and thus subjects it to irreparable injury from provisions of the Act other than Section 19a (e) under which the Commission's order was issued. The Commission has taken no action with respect to appellant under any other section, has made no order requiring a change in the company's mode of operation, and no demand or request for transportation service has ever been made upon the company. There is thus an entire want of any threat of injury, irreparable or otherwise, from the change in status which appellant erroneously claims the Commission ordered. *California* v. *Latimer*, 305 U. S. 255; *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419.

Deficiencies Act, pointed out that "It subjects the Alton to damage which is substantial, immediate and irreparable." On the other hand, in several cases, this Court has reviewed orders of the Interstate Commerce Commission which seem to have involved no threat of irreparable damage, although the point of equitable jurisdiction was not raised or discussed. See, *e. g., Norfolk & Western Ry. Co.* v. *United States*, 287 U. S. 134; *The Pipe Line Cases*, 234 U. S. 548; *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194. Moreover, in practice, petitions to review orders of the Interstate Commerce Commission under the Urgent Deficiencies Act have been treated as petitions as of right if only the order is final and the petitioner has a legal right or interest that will be injuriously affected by the order.

Because of this practice and because, in the opinion of the Interstate Commerce Commission, administrative convenience will be served by a review of the particular order [fol. 1189] which is here involved, the Government does not urge affirmance of the decree upon the ground that appellant has not shown irreparable injury. Affirmance is in any event required on the merits.

I

Valvoline Is Subject to the Interstate Commerce Act under the Provisions of Sections 1 (1) (b) and 1 (3)

That Valvoline is a common carrier within the definition of the Interstate Commerce Act is determined by the language of the statute itself and by the direct adjudication of the question by this Court in *The Pipe Line Cases*, 234 U. S. 548. And lingering doubt, if any there be, is effectively laid to rest by the legislative history of the statute.

The pertinent provisions of the Act follow (Sections 1 (1) (b) and 1 (3)):

> SEC. 1 (1) That the provisions of this part shall apply to common carriers engaged in—
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> * * * * * * *
>
> (b) The transportation of oil * * * by pipe line * * * from one state * * * of the United States * * * to any other state * * * of the United States. * * *

(3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire.

[fol. 1190] That Valvoline is a pipe-line company engaged in the interstate transportation of oil is not challenged.[5] Authorized by its charter to "engage in * * * any * * * transportation business of any kind or character whatsoever" (R. 83), it operates a connected system comprising 1,426 miles of pipe line, through which approximately 75,000 barrels of oil are transported each month hundreds of miles from points of origin to points of destination (R. 44, 55). Fifty percent of the oil so transported moves across state lines (R. 48).

The fact that Valvoline is a pipe-line company is determinative of the fact that it is a common carrier within the meaning of the Act; Section 1 (3) expressly directs that the term "common carrier * * * shall include all pipe-line companies."

Valvoline's contention is that the term "pipe-line companies" is modified by the clause "and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire." The contention entirely overlooks the fact that the quoted phrase is not a modifying dependent clause but an independent clause in the conjunctive. Its plain intent is to bring within the definition [fol. 1191] persons *in addition* to those specifically enumerated in the preceding part of the definition. The term "such transportation" refers to the "transportation" described in Section 1 (1) and (2); there is no mention of "transportation" in the preceding portion of Section 1 (3).

Valvoline's contention is precisely the argument which this Court rejected in *The Pipe Line Cases*, 234 U. S. 548. That case, like this, involved construction of Section 1 of

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[5] It is significant that Valvoline pays a federal tax (R. 15) imposed upon "all transportation of crude petroleum and liquid products thereof by pipe line." Revenue Act of 1932, Sec. 73 (a), 47 Stat. 275. Prior to 1932, the tax was imposed upon all "transportation of oil by pipe line." Revenue Act of 1918, Sec. 500 (d), 40 Stat. 1103.

the Interstate Commerce Act; the only distinguishing feature, and that adverse to appellant, is that at the time the decision was rendered the language of Section 1 gave superficial plausibility to the view that only common carriers, as that term is understood at common law, were included. The section at that time read in part as follows (34 Stat. 584):

> That the provisions of this Act shall apply to any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act.

This Court construed that provision to cover all pipe-line companies, whether operating as common carriers or not. It stated, 234 U. S. at 559, 560:

> The provisions of the act are to apply to any person engaged in the transportation of oil by means of pipe [fol. 1192] lines. The words who shall be considered and held to be common carriers within the meaning and purpose of this act obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but *an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such.* [Italics supplied.]

There is no merit in Valvoline's argument that the Transportation Act of 1920 (41 Stat. 456) so revised the language of Section 1 as to narrow its scope; the section as it now stands is even more clearly applicable to Valvoline than it was prior to its revision. The purpose of the revision was obviously only simplification of language; there was no intent to reverse the legislative policy of more than a decade. The bill which became the Transportation Act of 1920 was reported to the House and Senate by their conferees with the following comment on the section embodying the revision:

> Section 400 amends the first five paragraphs of section 1 of the Commerce Act, making minor corrections and

classifying language in several respects, but making no important change in policy. [Report No. 456, Nov. 10, 1919, to accompany H. R. 10453, 66th Cong., 1st Sess.].

[fol. 1193] Valvoline seeks to escape from the force of *The Pipe Line Cases* by urging that its operations are so different from those of the companies there involved that the decision is inapplicable to it. The contention disregards the decisive fact that this Court's decision was premised not so much on the operations of the particular pipe-line companies before the Court as upon the principle that the provisions of the Act "apply to any person engaged in the transportation of oil by means of pipe lines."

Beyond this, the contention is unsound because appellant's assertion that its operations differ from those of the companies involved in *The Pipe Line Cases* is contrary to fact.[6] Two of the companies, the Prairie Oil & Gas Co. and the Ohio Oil Co., were engaged solely in transportation. The oil purchased by them at the wells or from connecting carriers was sold again at the end of their lines. They operated no refineries. In this respect their operations may be distinguished from Valvoline's. But the decision of the Court holding the Tidewater Pipe Company, Ltd., subject to the Act is directly in point, since in no essential respect [fol. 1194] did the business of Tidewater differ from that of Valvoline.

Tidewater's lines extended from points of origin in Illinois, Pennsylvania, and New York to its refinery at Bayonne, New Jersey. It never operated as a carrier for hire, and carried only its own oil for the use of its own refinery. It possessed no right of eminent domain; all of its lines were built upon private rights-of-way or on

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[6] The facts as to the operations of the several companies are not stated in the majority opinion, but some reference is made thereto in the dissenting opinion of Mr. Justice McKenna (pp. 567-570) and they are briefly stated in the opinion of the Commerce Court, 204 Fed. 798, 802-803. In stating the facts of the case in the text of this brief we have had recourse not only to the opinion of the Commerce Court but also to the record in this Court, No. 508, Oct. Term, 1913.

Today, despite enactment of the statute, many, if not most, of the pipe-line companies still carry only their own [fol. 1200] oil to their own refineries.[12] If Valvoline is exempted from the Act because it operates in this manner, the present usefulness as well as the original purpose of the Act would in large measure be defeated. Every consideration of principle and authority repels the suggestion.

II

The Order of the Commission Does Not Impair the Constitutional Rights of Appellant

1. The Only Constitutional Issue Presented Is the Validity of Section 19a (e)

There is no dispute that if Valvoline is subject to the Act the Commission had statutory authority under Section 19a (e) to enter the order here contested. The issue as to the validity of the order relates solely to its constitutionality.

[fol. 1201] Appellant argues that in determining this issue the validity of the entire Act, as applied to its operations, must be determined. It advances two reasons in support of this claim. First, it asserts that the order serves to change its status from that of a private to that of a com-

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[12] See Splawn, *Report on Oil Pipe Lines*, H. Rep. 2192, 72nd Cong., 2d Sess. For purposes of this report pipe-line companies were classified as (1) large and medium-sized units integrated with the oil industry; (2) partially integrated and smaller integrated units of the oil industry (in which class Valvoline was included); and (3) independent pipe-line companies. Of the first group, operating 78 per cent of the pipe-line mileage, over 60 per cent of the companies reported that in 1931 they carried no oil other than their own in gathering lines and about 50 percent made a similar report on the use of their trunk lines. Of the second group, owning 3.5 percent of the pipe-line mileage, 8 out of 14 companies reported that in 1931 they carried no oil other than their own in their gathering lines and 2 out 5 no oil other than their own in their trunk lines. The third group, comprising independent pipe-line companies, of course carried nothing but "outside" oil.

mon carrier and thus can be supported only if Valvoline can constitutionally be required to assume the obligations of a common carrier under the Act. Secondly, it asserts that Section 19a (e), under which the order was issued, is inseparable from the principal regulatory provisions of the Act and that if those provisions fail Section 19a (e) must likewise fail.

We take issue with appellant upon both propositions. The Commission's order does not change appellant's status at all; it simply recognizes that Valvoline is a pipe-line company subject to the express provisions of the Interstate Commerce Act, and, as such, is required to comply with Valuation Order No. 26. Appellant's status is determined by the Act, not by order of the Commission.

Moreover, even if the order could possibly be construed as changing appellant's status from that of a private to that of a common carrier, appellant would nonetheless have no standing to call into question the validity of any provision of the Act other than Section 19a (e). The Commission has taken no action with respect to Valvoline under any other section, has made no order requiring a change in the company's mode of operation, and, as appellant states in [fol. 1202] its brief (p. 11), no demand or request for transportation service has ever been made upon the company. Indeed, appellant itself admits (Brief 30) that "it cannot be predicted * * * in what manner or how seriously" Valvoline may be affected by the requirements of the Act. Under these circumstances, a decision on the constitutionality of the entire statute would be an advisory opinion upon a hypothetical state of facts. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324; *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419; *California* v. *Latimer*, 305 U. S. 255.

In *California* v. *Latimer*, *supra*, it was held that a ruling by an administrative agency that a company is subject to the statute which the agency is engaged in administering does not of itself give the company standing to secure an injunction against enforcement of the statute. Specific action by the agency in relation to the company must be shown.

The *Electric Bond & Share* case is to the same effect. There the decree which this Court affirmed in effect required the defendant companies to register under the Public Utility Holding Company Act of 1935 and thus to change

their status from nonregistered companies, not subject to regulation, to registered companies subject to control by the Securities and Exchange Commission. This Court held that, despite the change of status required by the decree, defendants had no standing to seek, by way of cross-bill, an injunction against enforcement of provisions applicable [fol. 1203] to them as registered companies. The Court stated (p. 443):

> By the cross bill, defendants seek a judgment that each and every provision of the Act is unconstitutional. It presents a variety of hypothetical controversies which may never become real. We are invited to enter into a speculative inquiry for the purpose of condemning statutory provisions the effect of which in concrete situations, not yet developed, cannot now be definitely perceived. We must decline that invitation. *Anniston Manufacturing Co.* v. *Davis* [301 U. S. 337].

See also *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, at 324.

The question is not affected by the separability or inseparability of Section 19a (e). Whether or not that section is separable in the sense that, if the remainder of the Act were held invalid, that section could be enforced alone, need not now be determined; whether separable or not, the present exercise of authority under that section cannot be invalidated on the ground that at some future time appellant's rights may be invaded in the administration of other sections of the Act.

The question of separability appears to be nicely balanced; although the primary purpose of the information furnished under the Section is to aid the Commission in rate regulation, it also serves as the basis of reports to Congress (Section 19a (d)) and as a means of regulating [fol. 1204] pipe-line companies through the deterrent force of publicity. Cf. *Electric Bond and Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419. Moreover, the valuation made on the basis of this information may serve a multiplicity of useful purposes other than rate regulation. See Sharfman, *The Interstate Commerce Commission*, Vol. III-A, p. 116. It is significant that Section 19a (e) provides that, unless otherwise ordered by the Commission with the reasons therefor, the records and data of

the Commission shall be open to examination by the public.

Even if Section 19a (e) is inseparable, however, an order issued pursuant to its provisions may not be attacked on the ground that other provisions of the Act are unconstitutional. This Court has many times reiterated the proposition that a legislative act is presumed to be constitutional until otherwise adjudged in an appropriate judicial controversy, and "that it only hears objections to the constitutionality of laws from those who are themselves affected by its alleged unconstitutionality in the feature complained of." *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571, 576; *Premier-Pabst Sales Co.* v. *Grosscup*, 298 U. S. 226; *Heald* v. *District of Columbia*, 259 U. S. 114; *Yazoo & M. V. R. Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217. It follows, therefore, that for purposes of the present controversy, the provisions of the Act other than Section 19a (e) must be presumed valid. If those other provisions had in fact been struck down in actual controversy, it might be necessary to determine whether [fol. 1205] Section 19a (e) is too fragmentary to stand alone. But until such an occasion arises, the doctrine of separability cannot be invoked to defeat enforcement of the valid provision.

The proposition that appellant apparently espouses would make it the duty of a court to examine every provision of an allegedly inseparable statute in order to determine, not whether a particular provision sought to be enjoined is constitutional, but whether there are a sufficient number of other valid provisions to make worth while the enforcement of the valid provision in controversy. No such proposition has ever been recognized.

The present situation is closely analogous to that presented in *Heald* v. *District of Columbia*, 259 U. S. 114. That case involved an attack upon a statute, constitutional as applied to the complainants but alleged to be unconstitutional in its application to others. The complainants contended, just as does appellant here, that the statute was inseparable, and that if it was invalid in part it was void *in toto*. But this Court denied injunctive relief, holding that the complainants had no standing to attack the validity of parts of the statute which did not affect them in order to nullify the part which did affect them. See also *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571; *Yazoo & M. V. R. Co.* v.

Jackson Vinegar Co., 226 U. S. 217; *Hatch v. Reardon*, 204 U. S. 152; *Blackmer v. United States*, 284 U. S. 421. By parity of reasoning, the appellant here cannot contest the validity of sections of the Act not presently affecting it in [fol. 1206] order to nullify the particular section under which it has been ordered to furnish information.

2. Considered by Itself, Section 19a (e) Does Not Impair the Constitutional Rights of Appellant

Since no contention is made that Section 19a (e), considered by itself, is invalid as applied to appellant, it may be assumed that its separate validity is admitted. The admission is indeed compelled since the decisions of this Court allow of no doubt that Congress may require a company engaged in interstate commerce to furnish an administrative agency with relevant information concerning its operations. *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S. 194; *Electric Bond & Share Co. v. Securities and Exchange Commission, supra.* The cases cited are conclusive that such regulation is neither beyond the commerce power of Congress nor violative of the requirements of due process. If, therefore, we are right in our view that appellant has no standing to contest the validity of any other regulatory provisions in order to nullify Section 19a (e), the decree below must necessarily be affirmed.

3. The Principal Regulatory Provisions of the Act Are Constitutional as Applied to the Appellant

Affirmance of the decree is required irrespective of the standing of appellant, in the present proceeding, to question the validity of those sections of the Act which impose [fol. 1207] upon pipe-line companies at least some of the obligations of a common carrier. *The Pipe-Line Cases*, together with many other decisions of this Court, disclose that appellant's constitutional contentions are without substance.

The principal provisions which appellant attacks are those which require pipe-line companies, as a condition of engaging in the transportation of oil, to make their transportation facilities available to others "upon reasonable request" therefor (Section 1(4)) and to charge "reasonable" rates for the use of their pipe lines by others (Sec-

tion 1 (5)). Valvoline claims that if it is subjected to these provisions, it will be required to carry in its lines the ordinary pipe-line grade of crude oil in addition to the select grade of amber color oil which it now purchases and for which its refinery is designed. It asserts that large expenditures will be necessary to adapt its filtering, pumping, and other facilities to such operation.

It is obvious that appellant is conjuring up an entirely speculative injury on which to premise its constitutional argument. The actual fact is that Valvoline has never been requested to transport oil for anyone and that no producer or regulatory body has ever lodged a complaint against the company's present mode of operation. The Act does not automatically require Valvoline to change its operations. Valvoline may, in the first instance, file tariffs, rules, and regulations taking into account the necessities of its own [fol. 1208] particular situation. And certainly it is fair to assume that if at some future time a request is made of Valvoline for the use of its transportation facilities, the Commission, in determining whether the request is reasonable, will give due weight to appellant's method of operation, its policy of receiving into its lines only a certain grade and color of oil, the capacity of its lines, the other facilities available, and appellant's need of oil for its own refinery. Indeed, one of appellant's own officers testified (R. 51) that "If we are treated as a common carrier, I don't believe that we will have very many receipts from transportation of other people's crude oil. Except in certain cases, the same company would necessarily continue to carry practically exclusively its own oil." It is against this factual background that appellant's arguments must be viewed.

That Valvoline, in the operation of its pipe lines, is engaged in interstate commerce is beyond dispute. The fact that it simply transports its own oil over its own lines does not prevent that transportation from being interstate commerce or exempt it from federal regulation. *The Pipe Line Cases*, 234 U. S. 548; *United States* v. *Hill*, 248 U. S. 420; *United States* v. *Simpson*, 252 U. S. 465; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601.[13] The only pos-

[13] Appellant cites *Pennsylvania R. R. Co.* v. *Public Utilities Commission of Ohio*, 298 U. S. 170, as holding that transportation by a coal company of its own coal on its own

[fol. 1209] sible question, therefore, is whether the regulation imposed upon that commerce by the statute constitutes a taking of appellant's property without due process of law.

Here again *The Pipe Line Cases* furnish the definitive answer. This Court there upheld the Act against the challenge that it deprives pipe-line companies of their property without due process of law and takes such property for public use without just compensation. The Court held that there was no taking of property whatever and that "The whole case is that the appellees if they carry must do it in a way that they do not like" (p. 561). Mr. Justice Holmes, speaking for the Court, added the following emphatic dictum which, in our view, completely disposes of appellant's argument (p. 561):

> So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be [fol. 1210] established there can be no doubt that it is valid.

Valvoline did not lay any of its interstate pipe lines nor transport any oil by pipe line in interstate commerce until after August 28, 1906, the effective date of the pipe line amendment. By its own voluntary act, therefore, Valvoline subjected its property to the conditions of the statute and may not now be heard to say that enforcement of those conditions constitutes a violation of due process.

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barges down certain rivers in Pennsylvania and thence by rail over its own private tracks to Ohio was not "in commerce" (Brief 21). This interpretation of the decision is contradicted by the language of the opinion. Mr. Justice Cardozo stated (p. 174): "The question for us here is not whether the movement of the coal is to be classified as commerce or even as commerce between states. The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a federal commission." The Court construed the Act as applying to rail and water transportation only when conducted by common carriers. Therefore, it found that the transportation involved in that case was not subject to the Act.

In *Pierce Oil Co.* v. *Phoenix Refining Co.*, 259 U. S. 125, this Court made significant use of the dictum of Mr. Justice Holmes, quoted above. In that case the action of a state in requiring a foreign corporation to operate its local private oil line as a common carrier was upheld on the ground that the state law, pursuant to which this action was taken, was in force when the corporation entered the state. The Court stated (p. 128):

> • • • the contention that this order, of a tribunal to the jurisdiction of which the company voluntarily submitted itself, made after notice and upon full hearing, deprives it of its property without due process of law must be pronounced futile to the point almost of being frivolous. "By accepting the privilege it voluntarily consented to be bound by the conditions" attached to it (216 U. S. 56, 66), and, while enjoying the benefits of [fol. 1211] that privilege, it will not be heard to complain that an order, plainly within the scope of statutes in effect when it entered the State, is unconstitutional. *A claim so similar to the one we have here that the disposition of it should have been accepted as disposing of this case was dealt with by this court in the* Pipe Line Cases, *234 U. S. 548, 561, in a single sentence, saying: "So far as the statute contemplates future pipe lines and prescribes conditions upon which they may be established there can be no doubt that it is valid."* [Italics supplied.]

But even apart from the fact that appellant began the interstate transportation of oil by pipe line after the effective date of the Act, the provisions of the Act do not deprive it of its property without due process of law. The purpose of the statute—to free the channels of interstate oil transportation from abuses which had arisen through common control of pipe line and refinery—is clearly within the Congressional competence, and the provisions of the Act as applied to appellant have a real and substantial relation to that object.

In many situations the possession of a pipe line is a strategic factor of the utmost importance in the petroleum industry. As a practical matter, the oil producer may well be completely shut off from the market if he does not have a pipe-line outlet. Furthermore, if he has access to only

one pipe line, the owner of that line has it within his power [fol. 1212] to refuse to receive any oil except such as is sold to him before it enters the pipe line, and otherwise to dictate the terms and conditions on which the oil shall be transported. Refiners in many cases must have access to pipeline connections if they are to compete on equal terms with other refiners who have such connections. In the absence of regulation, therefore, a refiner who owns a line may possess substantial economic power over a large number of producers and over other refiners who are his competitors.

Under these circumstances there can be no substantial doubt that Congress was competent to prevent the economic power inherent in pipe-line ownership from being abused. See *The Pipe Line Cases*, 234 U. S. 548. Valvoline does not deny this, but asserts that it is only the main trunk pipe lines of the country which have such economic power. It contends that its operation, which is comparatively small, is incapable of participating in any evil on a national scale and consequently that the provisions of the Act are arbitrary and unreasonable as applied to it.

The contention is directly contravened by *Brass* v. *Stoeser*, 153 U. S. 391. That case involved the constitutionality of a North Dakota statute regulating all grain elevators without any restriction as to size or geographical location. The complainant elevator company sought to distinguish the prior decisions of the Court in *Munn* v. *Illinois*, [fol. 1213] 94 U. S. 113, and *Budd* v. *New York*, 143 U. S. 517, which upheld similar statutes of Illinois and New York, on the ground that those laws were "intended to operate in great trade centres, where, on account of the business being localized in the hands of a few persons in close proximity to each other, great opportunities for combinations to raise and control elevating and storage charges are afforded, while the wide extent of the State of North Dakota and the small population of its country towns and villages . . . present no such opportunities" (153 U. S. at 402). The evidence showed that there were about 600 grain elevators along the line of the Great Northern Railroad in North Dakota, that the business was keenly competitive throughout the State, and that at the very station where defendant's elevator was located two others were operating. The

Court found in these factual distinctions no reason for denying the legislative power, stating (p. 403):

> These arguments are disposed of, as we think, by the simple observation, already made, that the facts rehearsed are matters for those who make, not for those who interpret, the laws. When it is once admitted, as it is admitted here, that it is competent for the legislative power to control the business of elevating and storing grain, whether carried on by individuals or associations, in cities of one size and in some circumstances, it follows that such power may be [fol. 1214] legally exerted over the same business when carried on in smaller cities and in other circumstances.
> * * *

See also *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 201-202; *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495, 511-512, 514; *South Carolina State Highway Department* v. *Barnwell Bros., Inc.*, 303 U. S. 177, 190-191; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 154.

Moreover, there is no foundation in the record for the belief that the application of the Act to appellant may not result in the public benefits contemplated by Congress. The record is clear that should Valvoline refuse to purchase the oil of a producer, that producer would, in all save a few instances, have no other access to the market. That Valvoline has not in the past chosen to discriminate or prefer does not militate against its potential power to do so. It claims that the price which it pays for oil is governed by the competitive market and that it exercises no control over the price, yet it pays a premium of five cents a barrel over the posted market price on all oil moved in interstate commerce because "it is worth more to us" (R. 45). Clearly it is in control of this premium price, and were it to refuse to carry and the producers could transport their oil only by other carriers, they would lose at least the premium which their product presumably deserves. Moreover, Valvoline controls the delivered price which it charges the two inde- [fol. 1215] pendent refineries it is now serving, and should it decide to cut off their supply, they would be forced to buy the mixed grade of the common carrier lines. That these producers or refineries may never have cause to complain is not important. The validity of the statute depends upon its effect in situations that may reasonably be conceived.

purchased land. Like Valvoline, Tidewater's refinery was designed to refine only certain grades of oil. Its pipe lines extended only to those fields which produced sweet or nonsulphurous oil suitable for its refinery, and it contended that if its lines were used to transport sour or sulphurous oil as well, the sweet oil would be contaminated and the company subjected to irreparable loss.

In two respects Tidewater's claim for exemption as a purely private line was stronger than the claim advanced by Valvoline. Unlike Valvoline, it did not purchase all of its oil from the public, but was itself the owner of large producing acreage in Pennsylvania and Illinois, and, unlike Valvoline, it did not sell any oil transported by it to other refineries. Its own refinery consumed the entire capacity of its lines.

The actual operation of Tidewater's lines differed from Valvoline's operation in only two respects, neither of which [fol. 1195] is determinative: (1) the volume of oil transported was much greater, but the language of the statute clearly does not tolerate any limitation of degree; and (2) Tidewater's lines were connected with other pipe-line systems, but the oil so received was purchased at the connection points and transported over Tidewater's lines to its refinery as its own oil. The only effect of its connection with other pipe-line systems, therefore, was to afford a market to a greater number of producers than would otherwise have been the case.[7]

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[7] It cannot be contended that Tidewater was held subject to the Act on the ground that it was part of the Standard Oil Company system and monopoly by reason of the fact that Standard Oil controlled 30% of the stock of the Tidewater refinery. In the anti-trust action which the Government brought against the Standard Oil Company and its subsidiaries to dissolve their monopoly, Tidewater was made a party defendant. The action was dismissed as to it at the conclusion of the evidence upon the finding of the trial court that Tidewater had not "been proved to be engaged in the operation of carrying out the combination" (Record, *United States* v. *Standard Oil Co.*, No. 398, Oct. Term, 1910, Vol. 17, p. 525). That decision was rendered four years prior to the decision in *The Pipe Line Cases.*

The essential feature of Tidewater's operation, which this Court held determinative of its status under the statute, was that it afforded a market to the producing public and was, in the words of the Court (p. 559), carrying "a great subject of international commerce coming from many owners but * * * carrying it all as its own." Valvo-[fol. 1196] line is performing this identical function on a smaller scale.[8]

Valvoline relies upon that part of the decision in *The Pipe Line Cases* which held that the Uncle Sam Oil Company did not come within the terms of the Act. This Company operated a three-inch pipe line from its own oil wells near Bartlesville, Oklahoma, a distance of about 60 miles to its refinery at Cherrydale, Kansas. The company purchased no oil.[9] No other producer or member of the oil shipping

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[8] Appellant cites the decision of the Supreme Court of Illinois in *Tidewater Pipe Co.* v. *Board of Review*, 311 Ill. 375, 143 N. E. 87, and a curious dictum in the opinion to the effect that Tidewater is not a "common carrier" under the Pipe-Line Amendment because it transports only its own oil over its own lines to its own refinery. Apparently, that court inadvertently overlooked the fact that this very company had been held subject to the Act by this Court in *The Pipe Line Cases*. The dictum was merely an incidental expression of opinion, not germane to the decision, the question at issue being whether oil purchased by the company in Illinois and stored for a long period of time prior to its movement out of the state, was taxable by Illinois. The court made it clear that its decision that the oil was taxable did not turn upon the status of the company as a private or common carrier.

[9] In its brief (p. 14) Valvoline states, "Whether the Uncle Sam Oil Company transported only oil which it produced or whether it also purchased oil is not clear." This statement is based upon the opinion of the Commerce Court and upon Mr. Justice McKenna's statement in his dissenting opinion (p. 573) that "The extent to which it [Uncle Sam Oil Company] purchases oil from producers, if it does so at all, does not appear from the record." But Mr. Justice Holmes, for the Court, said (p. 562) that the pipe-line was "used for the sole purpose of conducting oil from its own wells to its own refinery." This was the allegation of the company's original petition for an injunction and there is

[fol. 1197] public was directly or indirectly interested in its operation or relied upon it either as a transporter or purchaser of oil.

Mr. Justice Holmes, for the Court, said (p. 562):

> This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, *and that is all*, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end.[10] [Italics supplied.]

[fol. 1198] The determining factor in the *Uncle Sam Oil Company* decision was not the common ownership of pipe line and refinery. Tidewater, the Standard Oil Company of New Jersey, and the Standard Oil Company of Louisiana were all held subject to the Act, although each of them simply transported its own oil over its own lines to its own refinery. The determining factor was that the Uncle Sam Oil Company did not purchase any oil from producers, had

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no evidence in the record to the contrary. Chief Justice White, concurring, said (p. 563); "It is shown beyond question that the company buys no oil * * *." Whatever the actual fact may have been, the Court based its decision upon this assumption.

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[10] Chief Justice White was of the opinion that even this company's operations fell within the meaning of the Act (p. 562), but he concurred in the result since he believed that to apply the Act to this company, whose pipe-line operations were begun prior to the passage of the statute, would deprive it of its property without just compensation in violation of the Fifth Amendment.

no substantial transportation system, and had no direct or indirect relation with the producing public."[11]

Valvoline cannot be exempted from the Act on similar grounds, since it affords a market in three States for 9,020 wells and 1,751 lease operators, representing 2,015 royalty owners. It has never refused to buy and admit into its lines oil that meets its specifications (R. 43). Whatever limitation the decision in *United States* v. *Uncle Sam Oil Co.* may be deemed to have put on the literal terms of the Act, appellant, as an interstate carrier transporting for hundreds of miles "a great subject of international com- [fol. 1199] merce coming from many owners" (234 U. S. at 559) does not fall within it.

We believe that the language of the statute itself and the decision of this Court in *The Pipe Line Cases* conclusively refute petitioner's claim of exemption. Under these circumstances we do not feel justified in laboring the argument by tracing here the legislative background of the Act. For the convenience of the Court, the statutory history is outlined in Appendix B, *infra*, pp. 53-57.

That history has striking application to the present case, for it reveals that the very two factors upon which Valvoline principally relies to exempt its operations from the Act—its common ownership and control of refinery and pipe line and its policy of transporting no oil other than its own—were the fundamental cause of the mischief at which the statute was directed. It was not the practices of common carriers or carriers of oil for hire which called forth the legislation, but rather the duress to which well owners and independent refiners were subjected by companies whose common control of pipe line and refinery gave them the economic power both to dictate the price of oil and to insist that all oil which they transported be sold to them before its transportation.

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[11] In his dissenting opinion, Mr. Justice McKenna said (p. 573): "And I take it if the companies had not made purchases of oil or refused offers of oil, they would not be held subject to the act. Such is the situation of the Uncle Sam Company and the ground of decision in regard to that company. It is not held to be within the act. * * * It may be supposed that if it venture to make purchases of oil it will lose its immunity."

It is immaterial that Valvoline, as a small independent refiner transporting oil for the use of its own refinery, cannot exercise monopolistic control over the production and marketing of oil on a nation-wide scale. The test of whether it can be subjected to regulation is not whether it presently enjoys a monopoly, is large in size, or has engaged in evil practices. As this Court stated in *Nebbia* v. *New York*, 291 U. S. 502, 534, "The touchstone of public interest in any business * * * clearly is not * * * the enjoyment of a monopoly." See also *Brass* v. *Stoeser*, 153 U. S. 391. The real question is whether the company falls in the general category of enterprises which Congress can regulate in order to achieve a legitimate purpose. In view of the history of the oil industry and of the evils which Congress sought to eliminate by enactment of the Statute, the constitutional propriety of including all pipe-line companies within the scope of the regulation, irrespective of questions of size or degree, is beyond question.

[fol. 1216] CONCLUSION

It is respectfully submitted that the decree of the court below dismissing the petition for want of equity should be affirmed.

Robert H. Jackson, Solicitor General; Thurman Arnold, Assistant Attorney General; Hugh B. Cox, Elmer B. Collins, Frank Coleman, Special Assistants to the Attorney General; Thomas M. Ross, Assistant Chief Counsel, Interstate Commerce Commission; Richard H. Demuth, Special Attorney; Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Of Counsel.

October 1939.

[fol. 1217] APPENDIX A

The pertinent provisions of the Interstate Commerce Act (Feb. 4, 1887, c. 104, 24 Stat. 379, as amended U. S. C., Title 49, Secs. 1, 19a), are as follows:

SEC. 1. (1) That the provisions of this part shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly

by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation takes place within the United States.

(2) The provisions of this part shall also apply to such transportation of passengers and property, but [fol. 1218] only in so far as such transportation takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivery, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid; or

(b) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this part except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier." The term "railroad" as

used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, [fol. 1219] including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

* * * * * * *

SEC. 19a (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part, except any street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation; but the Commission may in its discretion investigate, ascertain, and report the value of the property owned or used by any such electric railway subject to the provisions of this part whenever in its judgment such action is desirable in the public interest. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners, who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall, subject to the exception hereinbefore provided for in the case of electric railways, make an inventory which shall list the property of every common carrier subject to [fol. 1220] the provisions of this part in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as prac-

ticable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

* * * * * * *

(d) Such investigation shall be commenced within sixty days after approval of this part and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

(e) Every common carrier subject to the provisions of this part shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right-of-way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section twenty of this part shall have the full force and effect of law. Unless otherwise ordered by the Com- [fol. 1221] mission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

* * * * * * *

(k) The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with all the requirements of this section and in the manner prescribed by the commission, such carrier, receiver, or trustee shall forfeit to the United States the sum of $500 for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same

manner as other forfeitures provided for in section 16 of this part.

(l) The district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the commission, alleging a failure to comply with or a violation of any of the provisions of this section by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this section.

[fol. 1222] APPENDIX B

Legislative Background of the Pipe-Line Amendment

A rich source of material throwing light on the background of the Act is the voluminous record in the case of *Standard Oil Co.* v. *United States*, 221 U. S. 1.[1] That record reveals clearly that it was not the practices of *bona fide* common carriers or carriers for hire of oil by pipe line that gave rise to the existing evils, but rather the common control and ownership of pipe line and refinery and the policy pursued by pipe-line companies of transporting only oil produced by them or purchased by them at the wells from the producing public.

When *The Pipe Line Cases* were before the Commerce Court in 1912, it was stipulated that the testimony taken in the case of *Standard Oil Co.* v. *United States*, *supra*, should be considered by that court in determining the meaning of the Pipe-Line Amendment. That court, after a consideration of this record and the record before the Commission, [fol. 1223] observed (*Prairie Oil & Gas Co.* v. *United States*, 204 Fed. 798, 801):

> Some of these pipe lines, aggregating a large mileage, are admittedly subject to public regulation, because

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[1] While the evidence in the *Standard Oil Company* case was taken and the case decided a few years after the passage of the Pipe-Line Amendment, the record was directed at conditions existing during the preceding two decades and reveals the facts with which Congress was undoubtedly familiar when, in 1906, it debated and enacted the Pipe-Line Amendment.

their owners are public-service corporations engaged in the business of common carriers; but many of them belong to private companies, which use them only in the conduct of their private business. The private lines in most instances are owned or controlled by the refineries to which they transport crude oil and which they exclusively serve.

The construction of pipe lines, such as are owned by these petitioners, involves a large outlay of capital, and few producers of the crude article are able to provide themselves with such a facility for marketing their output. Consequently, and because the cost of railroad transportation is prohibitive, the great majority of oil producers find it to their interest to sell at the wells to the owners of pipe lines, and, as a practical matter, may have no other alternative. For this reason it comes to pass that these private pipe line companies transport not only the oil supplied by their own wells, but also the much greater amount purchased by them from other producers.

Pipe lines were not originally included in the "rate bill" introduced in the Fifty-ninth Congress (first session), and not until the bill had passed the House and was being debated in the Senate was the amendment offered. Senator Lodge, of Massachusetts, offered it on May 4, 1906 (40 Cong. Rec. 6361), shortly after the receipt by the Senate of a special message from the President transmitting a summary of the report of the Commissioner of the Bureau of [fol. 1224] Corporations on the subject of the oil industry.

Immediately Senator Foraker, of Ohio, arose to state (40 Cong. Rec. 6361):

I do not want to make any opposition to the Senator's amendment, but it occurs to me that the amendment ought to be further amended, so as to provide that it shall apply only to pipe lines operated for the public. I do not understand how you could compel a man who has a private pipe line of his own to become a common carrier. * * * I think such a limitation ought to be put in the Senator's amendment by an amendment to the amendment that it shall apply to all pipe lines that are carrying for the public, and not to private lines that an individual or a single corporation may have laid down and put into operation for its own benefit. * * *

Senator Nelson, of Minnesota, and Senator Lodge then replied:

> Mr. Nelson: In reference to the amendment suggested by the Senator from Ohio to the amendment of the Senator from Massachusetts, I desire to state that if that amendment is adopted it will practically nullify the provision, because every one of these pipe lines can say "we refuse to do business for the public." Practically the [original] amendment would be of no use at all. [Ibid. p. 6365.]
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> Mr. Lodge: Mr. President, the purpose of this amendment is to bring the transportation of oil and other commodities within the interstate-commerce law. Oil is one of the greatest articles of interstate com- [fol. 1225] merce carried in this country, and it is now absolutely outside and beyond any Government regulation whatsoever. • • • But the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come under this rule, will, as the Senator from Minnesota [Mr. Nelson] says, absolutely destroy the value of my amendment. [*Ibid.*, p. 6365.]
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> • • • • • • •
>
> Those well owners are absolutely at the mercy of the pipe lines. I have had cases brought to me, which in this fifteen-minute debate I cannot enlarge upon, where an independent refinery has been deprived of its supply of oil because it would not agree to the prices of the pipe lines. A small well owner is compelled to take the price that is offered by the controller of the trunk line. • • • The pipe-line companies buy the oil they use in their own refineries and owing to the fact that they buy the oil, if you put in the words "carry for the public," the pipe lines go right out from under this amendment, in my judgment. • • • There is no proposition • • • to push up the prices or push down the prices and make it impossible for a pipe line to operate. It is simply to give relief, if relief is sought, to those who find that they are not fairly treated or think they are not fairly treated by the pipe

lines, through which alone practically they can get their commodity to market. [*Ibid.*, pp. 6365-6366.]

During the course of the debate an attempt was made to amend the amendment so that it would apply only to carriers "for the public" or to "transportation for hire" or [fol. 1226] "for compensation" (*Ibid.*, p. 7000), but it was unsuccessful. Senator Lodge vigorously opposed it, saying:

> If you put in the words "transportation for hire" or "transportation for the public" you absolutely destroy this amendment so far as its effectiveness is concerned. The method of getting the oil is, as a rule, that the Standard Oil Company or the Pure Oil Company, which are the two great carriers of oil, buy it of the well owner and carry it, and they would immediately say they were not carrying for the public; that they were carrying for themselves. That is the reason why the word "public" or "transportation for hire" put in there would immediately wreck this amendment [40 Cong. Rec., p. 7000].

[fol. 1227] EXHIBIT "G" TO THE PETITION FOR REHEARING

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1939

No. 25

VALVOLINE OIL COMPANY, Appellant,

vs.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

Appeal from the District Court of the United States for the Western District of Pennsylvania

Brief on Behalf of the Valvoline Oil Company

J. Campbell Brandon, Butler, Pennsylvania; Harry S. Elkins, Munsey Building, Washington, D. C., Counsel for Valvoline Oil Company.

[fol. 1228] INDEX

Subject Index

	Original folio
Opinion of court	1
Jurisdiction	2
Questions	2
Statement	3
The Commission proceedings	5
Proceedings in court below	5, 6
Specifications of errors	6
Statutes involved	7
Summary of argument	7
Argument	9
I. Can the Valvoline be classified as a common carrier?	12
(a) Common carrier defined	13
(b) Transportation incidental to refinery operation	16
(c) Is any "Public Interest" involved?	17
(d) Oil transported is not "In Commerce"	20
(e) Purpose of valuation	23
(f) Valuation provisions of Act not severable	23
II. Are provisions of Act constitutional as applied to Valvoline Oil Company?	26
(a) Application of Act to Valvoline is in violation of due process clause	26
(b) Change of status is confiscatory	27
(c) Status cannot be changed by legislative fiat	28
Conclusion	30

Table of Cases Cited

Adair v. *United States*, 208 U. S. 161	27
Associated Pipe Lines v. *Railroad Commission of California*, 169 Pac. 62	19, 28
Atlantic Coast Line Ry. v. *Standard Oil Co.*, 12 F. (2d) 541	22
[fol. 1229] *Brink's Express* v. *Public Service Commission*, 117 Pa. S. C. 268, 178 Atl. 346	17
Campbell River Mills v. *Chicago, M. & St. Pa. Ry. Co.*, 53 F. (2d) 69, 52 S. Ct. 310	22

	Original folio
Dairymen's Cooperative Assn. v. *Public Service Co.*, 115 Pa. S. C. 100, 318 Pa. 381, 177 Atl. 770	29
Frost v. *R. R. Commission*, 271 U. S. 583, 70 L. Ed. 1101, 46 S. Ct. 605	20, 29
James v. *Public Service Commission*, 9 P. U. R. (N. S.) 398, 116 Pa. S. C. 577, 177 Atl. 343	17
New State Ice Co. v. *Liebmann*, 52 F. (2d) 349	20
N. Y., N. H. & H. R. Co. v. *I. C. C.*, 55 F. (2d) 1028, 287 U. S. 178, 53 S. C. 106, 77 L. Ed. 248	23
Overbrook v. *Public Service Commission*, 100 Pa. S. C. 217	20
Pennsylvania R. R. v. *Pitts., Lisbon & W. Ry. Co.*, 83 F. (2d) 861	21
Pennsylvania R. R. v. *Public Utilities Commission of Ohio*, 298 U. S. 170, 56 S. Ct. 687	21
Pipe Line Cases, 234 U. S. 548, 34 S. Ct. 956, 58 L. Ed. 1459	9, 14
Producers Pipe Line Co. v. *Martin*, 22 Fed. Supp. 44	19
Producers Transport Co. v. *R. R. Commission of California*, 251 U. S. 228	28
Public Service Commission v. *Grunshaw*, 49 Wyo. 158, 53 P. (2d) 1, 109 A. L. R. 534	17
Railroad Commissioners v. *Montana Grant Petroleum Co.*, P. U. R. Digest, Vol. 3, Sec. 105, page 2727	16
Rampone v. *Leonardini*, 1936 Annual P. U. R. 254, 39 Calif., R. C. R., 588	17
Savage v. *Jones*, 225 U. S. 501, 32 S. Ct. 715, 56 Fed. 1182	22
Smithennan & McDonald, Inc., v. *Mansfield Hardwood Lumber Co.*, 6 F. (2d) 29	29
Standard Oil v. *Hall*, 24 F. (2d) 455	20
State v. *Crochett*, 206 P. 816, 86 Okla. 124	20
State v. *Lyons*, 165 P. 419, 63 Okla. 285	20
State ex rel. Fulton v. *Ives*, 123 Fla. 401, 167 So. 394	29
[fol. 1230] *Tidewater Pipe Line Co.* v. *Crawford Co.*, 143 N. E. 87, 311 Illinois 375	15
Tyson Bros. v. *Banton*, 273 U. S. 418	19
Valcour v. *Morrisville*, 27 (N. S.) P. U. R. 34, 184 Atl. 881	19

	Original folio
Weisberger v. *Pennsylvania Public Utility Commission*, 7 A. (2d) 731	20
Williams v. *Standard Oil Co.*, 278 U. S. 235, 49 S. Ct. 115	17
Wolff Packing Co. v. *Court of Industrial Relations*, 262 U. S. 522, 43 S. Ct. 630	17
Youngstown & S. R. R. Co. v. *Penn. R. R. Co.*, 1935 P. U. R. 64, 7 P. U. C. 530	22

Statutes Cited

Act of June 18, 1910, c. 309, Sec. 1, 36 Stat. 539; March 3, 1911, c. 231, Sec. 209, 36 Stat. 1149; October 22, 1913, c. 32, 38 Stat. 219, U. S. C. A., Title 28, Secs. 45 and 45a	2
Commerce Court Act, Section 7, 36 Stat. 544	14
Hepburn Act of June 29, 1906 (34 Stat. 584)	7, 13
Interstate Commerce Act of February 4, 1887, c. 104, Sec. 1, 24 Stat. 379, as amended by the Hepburn Act of June 29, 1906, c. 3591, Sec. 1, 34 Stat. 584, and Section 400 of the Transportation Act of February 28, 1920, 41 Stat. 474 (49 U. S. C. A. 1)	7
Judicial Code, Sec. 238 as amended by the Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938, U. S. C. A., Title 28, Sec. 345, par. 4	2
Revenue Act of 1918, Sec. 50(d), 40 Stat. 1103	29
Revenue Act of 1932, Sec. 731(a), 47 Stat. 275	29
Sherman Act, 15 U. S. C. A. 1-7, 15	22
Transportation Act of 1920, Sec. 400 (41 Stat. 374)	7
Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 219, U. S. C. A., Title 28, Secs. 45 and 47a)	2

Other Authorities Cited

American Jurisprudence, Vol. 9, pp. 430-431	19
House Report No. 2192, 72d Congress	9, 25

[fol. 1231] Opinions

The opinion of the specially constituted District Court for the Western District of Pennsylvania is reported in *Valvoline Oil Company* v. *United States and Interstate Commerce Commission* in 25 F. Suppl. 460 and appears in the record p. 112.

[fol. 1232] The report of Division One of the Interstate Commerce Commission requiring the submission of data for valuation purposes is reported in 47 Val. Rep. 534 and is printed in the record p. 12. The report of the Commission on Further Hearing is reported in 48 Val. Rep. 10 and is printed in the record p. 23.

Jurisdiction

The final decree of the specially constituted court (R. 120) was entered December 29, 1938. The petition for appeal was filed (R. 126) February 20, 1939, and an order allowing the appeal was made the same day.

The jurisdiction of this Court is founded upon the following statutes:

Acts of June 18, 1910, C. 309, Sec. 1, 36 Stat. 539; March 3, 1911, C. 231, Sec. 209, 36 Stat. 1149; October 22, 1913, C. 32, 38 Stat. 219, U. S. C. A., Title 28, Secs. 45 and 45a.

Section 238 of the Judicial Code as amended by the Act of Feb. 13, 1925 (C. 229, § 1, 43 Stat. 938, U. S. C. A., Title 28, Sec. 345, par. 4).

Urgent Deficiencies Act of October 22, 1913 (C. 32, 38 Stat. 219, U. S. C. A., Title 28, Secs. 45 and 47a).

Questions Involved

The Bureau of Valuation in 1935 directed the Valvoline Oil Company to file its valuations and certain other data with the Interstate Commerce Commission not later than March 7, 1936 (R. 2). The Valvoline Oil Company never having been required to fulfill any other requirements of a common carrier refused on the grounds that its operation was private and that it did not hold itself out to the public as a common carrier. The appellant was not organized to operate a pipe line and only carries its own oil by pipe line as incidental to the operation of its refineries. The [fol. 1233] Commission ruled that under the Hepburn Act and its amendments that it was its duty to require the appellant to submit this data for valuation purposes holding that the Valvoline Oil Company was a common carrier within the terms of the act. In passing on this question the Federal Court restricted its opinion to the one question of filing data requested but did not declare the appellant a

common carrier for all purposes. The questions before this Court are:

(A) Whether under the fact the Valvoline Oil Company can be held to be a common carrier.

(B) Whether the Valvoline Oil Company can be compelled to file data for valuation of its properties if it is not a common carrier.

(C) Whether the lower court erred in directing compliance with the Interstate Commerce Commission's order for valuation without determining the Valvoline Oil Company's status.

(D) Whether the decree of the lower court is constitutional.

Statement

This is a direct appeal from the decree of the United States District Court for Western District of Pennsylvania sitting as a specially constituted three judge court dismissing the petition for an injunction and directing the Valvoline Oil Company to comply with the order of the Interstate Commerce Commission for filing data with the Bureau of Valuation of the Interstate Commerce Commission.

The Valvoline Oil Company is one of the oldest refining companies in this country. It owns and operates refineries at Butler, Pennsylvania, and Warren, Pennsylvania, for the manufacture of high grade lubricating oils and other products from selected Pennsylvania crude oil.

[fol. 1234] Beginning as a partnership in 1868 in Brooklyn (R. 65) to refine crude oil it continued until 1901 when a New Jersey Charter was granted to the company (Exhibit No. 4, R. 82). Gathering pipe lines were laid prior to 1890 (R. 66) and have been extended to various fields of oil development in Pennsylvania. In 1913 (R. 44) the company extended its lines to Cairo, West Virginia, and in 1926 into Ohio. It now operates in these three States, gathering oil for the Butler refinery, the Warren refinery having been shut down since 1932 (R. 47).

The Valvoline Oil Company's operation is unique. It buys the crude direct from the producer and lays its lines to the producers' tanks. The day the oil is run from the producers' tanks it is bought by the Valvoline at the price

fixed and quoted by the common carrier pipe lines in that district without any charge for pipeage or transportation. The Valvoline produces no oil and has nothing to do with the price regulations on crude oil (R. 45). In order to have lubricating oil of high quality and color to meet the exacting demands of trade, both domestic and foreign (R. 52), the Valvoline early found it necessary to take only selected crude. Laboratory tests are made for color and various ingredients and oils that fail to meet these requirements are refused (R. 51). This practice has continued for many years and is still in vogue. The importance of having light colored amber crude is well known in refinery circles (R. 53).

The Valvoline has never served the public in any way. It transports only its own oil for use in its refinery. It operates over its own private rights of way without the right of eminent domain. It has no tariffs or carrying charges, nor has it ever had any demand made upon it to transport oil for others. The Valvoline Pipe Lines is a department of the Valvoline Oil Company. The company was incorporated in New Jersey to continue the operation [fol. 1235] formerly conducted by the partnership. In the charter it is permitted "to engage in any other manufacturing, mining, construction or transportation business" (R. 83). It was never organized as a pipe line company.

The Valvoline lines are practically all two inch and three inch lines not suited for common carrier purposes, nor does it have storage capacity necessary in the transportation business.

The Valvoline has continued in its private capacity to transport its own oil without any supervision by the Interstate Commerce Commission or any State agency. In 1935 the Director of the Bureau of Valuation, in a letter addressed to the Valvoline, directed it to submit certain data and make valuation returns in accordance with Valuation Order No. 26 Revised effective December 31, 1934, the returns to be filed not later than March 7, 1936 (R. 10). The Valvoline refused to comply with the order and filed its petition with the Interstate Commerce Commission denying the right of the Bureau of Valuation to make such demands or that the Valvoline was subject to the provisions of the Act (R. 10).

After a hearing Division I of the Interstate Commerce Commission filed a report February 2, 1937, 47 Val. Rep.

534 (R. 12), holding the Valvoline to be a common carrier subject to the provisions of the Interstate Commerce Act and that it should comply with Valuation Order No. 26. A petition was filed for rehearing (R. 20) based on changed conditions in operations. After further hearing by the entire Commission a report was filed June 6, 1938 (R. 23, 48 Val. Rep. 10), and the Valvoline was again directed to file its data as required by the order. The Valvoline on August 5, 1938, presented a petition to the United States District Court for Western District of Pennsylvania asking for an injunction to restrain the Interstate Commerce Commission from enforcing its Valuation Order. A hearing [fol. 1236] was held before a three judge court specially constituted which was by agreement treated as a final hearing. An opinion by Maris, Circuit Judge (R. 112) filed December 3, 1938, restricting the issue to its narrowest terms, held "that the Valvoline is subject to the provisions of Section 19a of the Interstate Commerce Act authorizing the Commission to value its pipe line property and requiring it to cooperate by furnishing relevant data. That is the only question involved in the case. The case does not involve and we of course do not decide any question as to the extent of the other obligations which may have been imposed upon the Valvoline by the Act." Following this opinion an order was filed January 3, 1939, by the court staying compliance with the decree and valuation order pending final determination of the Appeal to the Supreme Court (R. 124). A petition for appeal to the Supreme Court was filed February 20, 1939, and an order made the same day allowing the appeal (R. 126).

Specification of Errors

The following errors of the District Court are urged herein:

1. In entering the decree dismissing the petition of the plaintiff for a temporary and permanent injunction for want of equity.

2. In holding that the Valvoline Oil Company is a common carrier engaged in interstate transportation of oil by pipe lines within the meaning of the Interstate Commerce Act to the extent that it is subject to the provisions of Section 19a of the Act.

3. In holding that the order of the Interstate Commerce Commission entered June 6, 1938, directing the Valvoline Oil Company to comply with the provisions of the Com-
[fol. 1237] mission's Valuation Order No. 26 was within the Commission's statutory powers and was constitutional.

4. In holding that the petition of the Valvoline Oil Company for an injunction enjoining the enforcement of the order should be dismissed.

5. In holding that the Interstate Commerce Commission had any authority or control over the operations of the Valvoline Oil Company.

6. In refusing to find that the Valvoline Oil Company was a purely private corporation not engaged in any interstate commerce in which the public was interested nor was subject to any regulatory provisions of the Interstate Commerce Act.

7. In failing and refusing to give and accord proper legal force and effect to the evidence of record in this case.

Statutes Involved

This appeal involves an interpretation of the Interstate Commerce Act of February 4, 1887, C. 104 § 1, 24 Stat. 379, as amended by the Hepburn Act of June 29, 1906, C. 3591 § 1, 34 Stat. 584, and Section 400 of the Transportation Act of February 28, 1920, 41 Stat. 474 (49 U. S. C. A. 1).

The pertinent provisions are as follows:

Sec. 1 (1) That the provisions of this chapter shall apply to common carriers engaged in——

Sec. 1 (1) (B) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water;——

Sec. 1 (3) The term "common carrier" as used in this chapter shall include all pipe line companies; tele-
[fol. 1238] graph, telephone and cable companies operating by wire or wireless; express companies; sleeping car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid or transmission as aforesaid as common carriers for hire——

Sec. 1 (4) It shall be the duty of every common carrier subject to this chapter—to provide and furnish

such transportation upon reasonable request therefor and to establish through routes and just and reasonable rates, fares and charges applicable thereto and to provide reasonable facilities for operating through routes——.

Sec. 1 (5) All charges made—shall be just and reasonable—and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Sec. 1 (6) It is made the duty of all common carriers subject to the provisions of this part to establish, observe and enforce just and reasonable classifications of property for transportation—and just and reasonable regulations and practices.——

Sec. 19a (a) That the Commission shall, as hereinafter provided, investigate, ascertain and report the value of all the property owned or used by every common carrier subject to the provisions of this part——.

Sec. 19a (E) Every common carrier subject to the provisions of this part shall furnish to the Commission or its agents, from time to time and as the Commission may require maps; profiles, contracts, reports of engineers and any other documents, records, and papers; or copies of any or all of the same, in and of such investigation and determination of the value of the property of said common carrier.——

Sec. 19a (i) All final valuations by the Commission and the classification thereof shall be published and [fol. 1239] shall be *prima facie* evidence of the value of the property in all proceedings under this chapter——.

The above quotations are from the Interstate Commerce Act as amended by Section 400 of the Transportation Act of 1920 (41 Stat. 474). The portion of the Hepburn Act of June 29, 1906 (34 Stat. 584), Section One which first included pipe line companies reads as follows:

"That the provisions of this Act shall apply to any corporations or any person or persons engaged in the transportation of oil or other commodity except water and except natural or artificial gas, by means of pipe

lines, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act."

Argument

Introductory

This appeal involves a consideration of the provisions of the Interstate Commerce Act and its amendments dealing particularly with pipe line companies. It brings again before this Court some questions that were considered in the *Pipe Line Cases*, 234 U. S. 548 (reversing in part 204 Fed. Rep. 798), particularly the *Uncle Sam Oil Company* case.

After the decision in the *Pipe Line Cases*, the Interstate Commerce Commission conducted a pipe line investigation and filed a report known as the "Splawn report." House Report No. 2192, 72nd Congress.

This report contains data of its operations furnished by the Valvoline Oil Company but when the order was made requiring certain pipe line companies to file schedules of rates and charges the Valvoline was not named in the order, although at that time it had extended its lines across the Pennsylvania-West Virginia line (R. 16). It is significant that from that time until the present proceeding no request was made by the Interstate Commerce Commission for data [fol. 1240] or rates, nor was any effort made to bring the Valvoline under the supervision of the Commission or to show that it was affected by the Hepburn Amendment.

The uncontradicted facts developed in the evidence showing the methods used by the Valvoline in its operation are essential to a proper determination of this case. Summarized they are as follows:

The Valvoline and its predecessors have been refiners of crude oil since 1868. To secure an independent source of supply it has for years gathered oil in pipe lines leading to its refineries. First shipments were made from Pennsylvania about 1890 (R. 66) partly by pipe line and partly by rail to Edgewater, New Jersey. Its lines were extended in 1913 to West Virginia, in 1925 to Ohio (R. 44).

The company selects its grade of crude by laboratory tests (R. 51) and rejects oil offered that does not meet requirements (R. 52) even though it has lines through the leases (R. 46).

The Valvoline lays its lines to the producer's tanks and purchases the oil before it is run into the company's lines. The Valvoline operates only in districts served by large common carriers (Exhibit No. 8) and pays the market price or a premium. There is no written contract to purchase. The producer can change connections from the Valvoline to a common carrier line or vice versa within twenty-four hours. No producer is deprived of an outlet for his product (R. 45).

The Valvoline's lines are laid to transport oil directly to its refineries. It stores no oil except at the refineries and has no storage facilities or tank farms along its lines. It has never run any oil that it did not own. It has never sold any oil run — its lines except a small amount of excess oil occasioned by the temporary shut down of the Warren refinery (R. 42). None of the oil sold is now transported across State lines, though for a short time prior to the first [fol. 1241] hearing some oil was gathered in Ohio and sold in West Virginia (R. 20).

The Valvoline gathers its crude oil from about 9020 wells known as "stripper wells" which average 26/100 of a barrel per well per day for a daily run of approximately 2500 barrels. These wells are owned in many small fractional working and royalty interests. The oil carried by the Valvoline is approximately 1% of the total oil run by the common carriers serving the district. The Valvoline operates in a highly competitive field with a constantly diminishing supply of crude oil (R. 48).

The Valvoline has never exercised the right of eminent domain (R. 44). It lays its lines, approximately 1500 miles, on private rights of way (R. 44). It has never transported oil for anyone and no demand or request for transportation service has ever been made upon the company. None of the States in which it operates has undertaken any regulation of its operations or required any permit or franchise (R. 50). No producer is required to sign any agreement or contract for the sale of oil. It is a voluntary arrangement between buyer and seller that can be terminated at any time without notice (R. 45).

If the Valvoline is deemed to be a common carrier it will involve great expense to meet the requirements of the public and the Interstate Commerce Commission (R. 42) and render its own refinery operations much less profitable on account of the various grades and colors of crude oil pro-

duced in the different districts. Valvoline's right to expand, contract and carry on its business as a private refinery enterprise would be impaired and infringed upon if the pipe line department is held to be a common carrier and subjected to all the burdens and restrictions of common carrier operations.

The District Court held that the Valvoline was subject to the provisions of the Act only insofar as it was required [fol. 1242] to comply with Section 19a of Valuation Order No. 26 and that the Act was constitutional as applied to the Valvoline's operations. We contend—

I. That:

(A) The Valvoline is and always has been a purely private enterprise;

(B) That the pipe lines are merely a department or arm in the refining business;

(C) That no "public interest" is involved in the operation;

(D) That the oil transported is not "in commerce" or subject to regulations;

(E) That valuation of properties is the basis for rate making and further regulations;

(F) That the valuation provisions of the Interstate Commerce Act are not severable.

II. That:

(A) The Act as applied to the Valvoline is in violation of the Due Process Clause of the 5th Amendment;

(B) That the change of status is confiscatory;

(C) That its status cannot be changed by legislative fiat.

Argument

I

Can the Valvoline Oil Company be Classified as a Common Carrier Within the Term, Subject to the Provisions of the Interstate Commerce Act?

This question we contend must be answered in the negative when the uncontradicted facts concerning the operations, as shown in the testimony, are fully considered.

[fol. 1243] (a) "Common Carrier" as Defined by the Amendments to the Act

The Hepburn amendment of June 29, 1906 (34 Stat. 584), to the Interstate Commerce Act, the first to include pipe line companies, reads as follows:

> Section 1. "That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity except natural or artificial gas by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe line and partly by water who shall be considered and held to be common carriers within the meaning and purpose of this act."

The definition of the term "common carrier" in the 1906 Act appears in section one as follows:

> "The term 'common carrier' as used in this act shall include express companies and sleeping car companies. The term 'railroad' as used in this act shall include all bridges and ferries used or operated in connection with any railroad and also all the road in use by any corporation operating a railroad whether owned or operated under a contract agreement or lease and shall also include all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property; and the term transportation shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing storage and handling of property transported; and it shall be the duty of [fol. 1244] every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor and to establish through routes and just and reasonable rates applicable thereto."

No other definition of a common carrier is given in the Act of 1906. The Commerce Court Act, Section 7 (36 Stat. 544), carries the same definition.

Then came the Transportation Act of 1920 which contained a new definition. Section 1 (3) "The term 'common carrier' as used in this chapter shall include all pipe line companies; telegraph, telephone and cable companies operating by wire or wireless; express companies; sleeping car companies; and all persons, natural or artificial, *engaged in such transportation or transmission as aforesaid as common carriers for hire.* (Italics are added.) Wherever the word 'carriers' is used in this chapter it shall be held to mean 'common carrier'."

The Congressional Record shows no reference in the debates on the Act to the amendment to this definition, nor is any explanation given for the addition of the words "as common carriers for hire."

The explanation comes from the fact that between the Act of 1906 and the Act of 1920 the Supreme Court had occasion to construe the pipe line amendment in the *Pipe Line Cases*, 234 U. S. 548, 34 S. Ct. 956, 58 L. Ed. 1459, affirming 204 Fed. Rep. 798 in part and reversing in part. In those cases, particularly the *Uncle Sam Oil Company* case, the court held that the mere fact that a company carried oil across State lines by pipe line did not make it a common carrier. The Uncle Sam Oil Company owned and operated a refinery in Kansas. It also owned and operated certain wells in Oklahoma and transported oil by pipe line across the State line to its refinery. Whether the Uncle Sam Oil Company transported only oil it produced or whether [fol. 1245] it also purchased oil is not clear. In 204 Fed. Rep. 798-802 we read: "The extent to which this company purchases oil from other producers, if it engages in that business at all does not appear from the record."

The ownership of the oil was not the determining factor for the large carriers all claimed ownership as well. The court held that the Uncle Sam operation was for a definite use in its own refinery, "the transportation being merely an incident to use at the end." Thus the first time the court construes the pipe line Amendment it holds that a company can transport oil by pipe line across State lines and not become a common carrier within the provisions of the Act.

The Valvoline operation differs in one respect—it pro-

duces no oil from its own wells. It purchases its oil from various producers but the transportation is nonetheless incidental to its use in its refineries. Thus is a *bona fide* use established by many years of operation and the ownership is not a mere subterfuge as was found in the other carriers in the *Pipe Line Cases.*

After this decision came the new definition with the qualifying phrase "engaged in such transportation or transmission as aforesaid as common carriers for hire." The words "as aforesaid" refer to the various methods of transportation including pipe lines. The whole history of the pipe line legislation shows that it was to strike at a private monopoly among companies whose primary function was the public transportation by pipe line for profit. The 1920 amendment clarified the definition by excluding private *bona fide* operations that served no public interest. The Valvoline's operations clearly exclude it from the provisions of the act as thus defined.

This line of reasoning was followed in *Tidewater Pipe Line Co.* v. *Crawford Co.*, 143 N. E. 87, 311 Illinois 375 (1924), in which the *Uncle Sam Oil Company* case was cited [fol. 1246] with approval. The Tidewater Company sought to be relieved of local taxation on oil in tanks. This oil was purchased in Crawford County, Illinois, and gathered for shipment to the company's plant in Bayonne, New Jersey. The court made no distinction between oil purchased from producers and oil produced from the company's wells and held that the company in this operation was not a common carrier.

In a Montana case, *Railroad Commissioners* v. *Montana Grant Petroleum Co.*, Docket No. 929, Report and Order No. 1435, Dec. 1, 1925, P. U. R. Digest Vol. 3, sec. 105, page 2727, it was held that a corporation producing a small amount of oil and purchasing larger amounts on term contracts does not by transporting such oil through a pipe line to its refinery act as a common carrier if it does not transport oil for hire and has no monopoly of the field.

(b) Transportation by Pipe Line Merely an Incident to Operation of Valvoline Refineries

The Valvoline early in its history determined that an independent supply of selected crude oil was necessary for

successful and profitable operation of its refineries. It therefore undertook the construction of gathering lines, as distinguished from larger trunk lines, for transportation first in Pennsylvania, later in West Virginia and Ohio. These extensions were necessary to secure oil in a diminishing field. Through all the years the Valvoline maintained a strictly private status. It had no right of eminent domain and assumed none. Its lines were laid direct from the producers to its own refineries and were constructed with no thought of carrying oil for any other person. It has neither lines nor storage adequate to handle or deliver oil for other producers and to make such changes would involve enormous expense. There are large common carriers owning refineries to which they deliver their own oil, but it must be borne in mind that they are primarily carriers [fol. 1247] and the refineries are an adjunct to their transportation systems. The acid test of a company's status is its method of conducting its business over a period of years. The Valvoline's operations meet this test.

Rampone v. *Leonardini* (1936), 1936 Annual P. U. R. 254, 39 Calif., R. C. R. 588;

Public Service Commission v. *Grunshaw*, 49 Wyo. 158, 53 P. (2nd) 1, 109 A. L. R. 534;

James v. *Public Service Commission* (1935), 9 P. U. R. (N. S.) 398, 116 Pa. S. C. 577, 177 Atl. 343;

Brink's Express v. *Public Service Commission*, 117 Pa. S. C. 268, 178 Atl. 346.

(c) Is There Any "Public Interest" Involved in Valvoline's Operations?

The Commission in its report (R. 18) states, "We find that there is a public interest served in the movement of the commodity carried by it."

Practically every private business serves some public interest but this term "public interest" as used in the Commission's report must be limited to the meaning given it in judicial decisions. This term is used almost exclusively in the classification of business known as public utilities. "It means that a business or property in order to be affected with a public interest must be such or be so employed as to justify the conclusion that it has been devoted to a

public use and its use thereby in effect granted to the public." *Williams* v. *Standard Oil Co.*, 278 U. S. 235-239-240, 49 S. Ct. 115.

In *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, 43 S. Ct. 630, Chief Justice Taft speaking for the court subdivides business clothed with a public interest justifying public regulation into three classes; "(1) Those carried on under the authority of a public grant or privileges expressly or impliedly imposing an affirmative duty of ren- [fol. 1248] dering public service demanded by the public such as common carriers and public utilities. (2) Occupations regarded as exceptional, the public interest attaching to which has been recognized from earliest times and has survived the period of arbitrary laws by Parliament or colonial legislatures for regulating trades and callings. In this class are inns, cabs and grist mills. (3) Businesses which, though not public at their inception, have become such by devoting their business to a public use, thereby granting the public an interest in that use and subjecting themselves to public regulations to the extent of that interest, although the property continues to belong to its private owner and to be entitled to protection accordingly."

The reasoning by the Commission is largely based on the fact that the Valvoline gathers oil from 9020 (Exhibit #10, R. 92) stripper wells scattered over Western Pennsylvania, West Virginia and a small part of Ohio, owned by less than 500 producers or groups (R. 25). That these wells are so small that common carriers cannot afford to construct, maintain and operate lines for transportation of oil in such small quantities. Thus instead of benefitting the producers by having the Valvoline declared a common carrier it would have the opposite effect and tend to destroy the outlet for their oil if the Valvoline had to operate under common carrier regulations. Far from being a monopoly compelling producers to sell their oil, the Valvoline, not fettered by the burdens of common carrier regulations, is able by economical operation to furnish them access to market at prices at least equal to the prices posted by common carriers. Even these operations are in some instances not profitable (R. 64).

The record is void of any fact or circumstance that would indicate public interest in the Valvoline's operation. Gen-

eral welfare does not furnish a sufficient basis for every regulation to which a business might be subjected; nor does the fact that the operation is large and covers considerable [fol. 1249] territory give it any element of public interest. *Tyson Bros.* v. *Banton*, 273 U. S. 418-430.

In the territory served by the Valvoline (Exhibit # 15, Map) the six common carriers transported 79,512.084 barrels of crude and in the same year the Valvoline ran 890,-885 barrels. Where a company transports only a relatively small part of the total production of the field and carries on its business in a private manner it is not a common carrier. *Associated Pipe Lines* v. *Railroad Commission of California*, L. R. A. (N. S.) 1918 C. 849, 169 Pa. 62.

American Jurisprudence Vol. 9, pp. 430-431, cited with approval in 112 A. L. R. 86-90 annotation, states: "The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently and hence he is regarded, in some respects, as a public servant. The dominant and controlling factor in determining the status of one as a common carrier is his public profession or holding out by words or by a course of conduct as to the service offered or performed."

> "The important thing in determining if a corporation is a public utility is what it does, not what its charter says."
>
> *Valcour* v. *Morrisville* (Vermont) 27 (New Series) P. U. R. 34-39, 184 Atl. 881.

It was held in *Producers Pipe Line Co.* v. *Martin*, 22 Fed. Sup. 44 (Kentucky), that the public has no right to the use of a pipe line and the owner cannot be compelled to allow any person producing oil to use it where it acquired none of its rights by condemnation, does not hold itself out as a common carrier and uses it only to transport its own oil acquired from many producers.

> "We understand 'public interest' to mean more than mere curiosity. It means something in which the public, the community at large, has some pecuniary in-[fol. 1250] terest or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as the interests of the particular

localities which may be affected by the matters in question."

State v. *Lyons*, 165 P. 419, 63 Okla. 285; also *State* v. *Crochett*, 206 P. 816, 86 Okla. 124, *New State Ice Co.* v. *Liebmann*, 52 F. (2nd) 349, *Standard Oil* v. *Hall*, 24 F. (2nd) 455, *Overbrook* v. *Public Service Commission*, 100 Pa. S. C. 217.

In a recent case decided by the Superior Court of Pennsylvania, *Weisberger* v. *Pennsylvania Public Utility Commission*, reported in advance sheet 7 A. (2nd) 731, Weisberger operated a dairy and hauled milk purchased from various producers to his dairy and charged the cost of transportation against the price paid for the milk. It was held that the purchaser was his own carrier, the transportation being necessary for the conduct of his own dairy business and was not a common or contract carrier under the statute, citing the *Uncle Sam Oil Company* case as well as *Frost* v. *R. R. Commission*, 271 U. S. 583 and others.

(d) The Oil Transported by the Valvoline Is Not "In Commerce"

The Valvoline requires selected crude for its refinery graded according to color and refining qualities (R. 52). This oil is bought direct from the producer and flows from his tanks to the Valvoline's lines. It is not mixed or commingled with any other oil. Only one grade of oil is transported through these lines. All lines are laid from the producing fields to the refineries. No oil is stored except at the plant which is limited to a ten-day supply. Constant pumping of crude through the lines is essential to the operation of the refinery. This transportation becomes a vital part of the refinery operation. Crude oil is the raw product which is carried to the refinery for manufacture into lubri- [fol. 1251] cating oils, petrolatum and other products. This oil is not "in commerce" until the refining is complete and the products ready for market.

In *Pennsylvania R. R.* v. *Public Utilities Commission of Ohio*, 298 U. S. 170, 56 S. Ct. 687, the Pittsburgh Coal Company transported coal in its own barges down the river and then carried it by rail over private tracks from Pennsylvania to Ohio to its plant to be washed and graded for mar-

ket, "making use of its own facilities, its trains and tugs and barges." This Court sustained the Coal Company's contention that the coal transported by rail across State lines was not "in commerce" until it left the plant where it is prepared for market and was therefore not subject to the regulations of Interstate Commerce. The late Justice Cardozo, speaking for the court, said:

> "Not all commerce is transportation and not all transportation is by common carrier by rail. The question for us here is not whether the movement of the coal is to be classified as commerce or even as commerce between the States. The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a Federal Trade Commission. The Interstate Commerce Act (49 U. S. C. A. # 1 *et seq.*) is aimed at common carriers exclusively # 1(1)(3) and not even at all these."
>
> In determining the application of the Act, "transportation begins for that purpose, if not for others, when the merchandise has been placed in the possession of a carrier—And wherever the word carrier is used in this chapter it shall be held to mean 'common carrier'—. *The transportation between Pennsylvania and Ohio was by the owner who was not a common carrier but furnished implements of carriage for its own use exclusively.*" (Italics are added.)
>
> Also *Pennsylvania R. R.* v. *Pitts. Lisbon & W. Ry. Co.*, 83 F. (2d) 861-865.

[fol. 1252] In *Campbell River Mills* v. *Chicago M. & St. P. Ry. Co.*, 53 F. (2d) 69, 52 S. Ct. 310, affirming 42 F. (2d) 775, 283 U. S. 536, 76 L. Ed. 930, logs were hauled over a private logging railroad from British Columbia across the border to U. S. and delivered to defendant railroad for shipment. The logs were not "in commerce" until committ-d to the railroad for shipment. Commerce is a practical legal conception drawn from the course of business, *Savage* v. *Jones*, 225 U. S. 501, 32 S. Ct. 715, 56 Fed. 1182. There is a difference between interstate commerce and interstate transportation. One is governed by the nature of the business; the other by the nature of the particular transportation. "Commerce" is within inhibitions of the

Sherman Act, 15 U. S. C. A. § 1-7, 15, but "transportation" may have no relation to interstate rates on shipment of the same goods within the same State. *Atlantic Coast Line Ry.* v. *Standard Oil Co.*, 12 F. (2d) 541-547, *Youngstown & S. R. R. Co.* v. *Penna. R. R. Co.*, 1935 P. U. R. 64, 7 P. U. C. 530-537.

It is true that the Valvoline sells a very small amount of its oil in crude state. Due to economic conditions the Warren refinery has been shut down since 1932. From 1934 to 1937 a small amount of crude, 3.78% of the total monthly run, was transported from Ohio to West Virginia. A small part of this oil was sold to the refinery at St. Marys, West Virginia (R. 54). This arrangement was a temporary one to dispose of excess crude. None of the crude oil sold has crossed state lines since 1937 (R. 54). It was sold to two small refineries close to the Valvoline lines as an accommodation to the Valvoline and at its request (R. 64). The amount of excess oil is diminishing and will soon adjust itself. This sale of excess oil as a temporary measure does not change the status of the company, *Valcour* v. *Morrisville, supra.*

[fol. 1253] (e) Purpose of Requirement Under the Act for Valuation of Properties

Under Sec. 19a(a) of the Act the Commission was directed to value the properties belonging to or used by common carriers. The purpose of this provision for valuation is to have adequate data to determine the justness of the rates charged by the carriers. The order for Valuation No. 2[illegible] served on the Valvoline is the first step in compelling it as a common carrier to submit data, establish traffics and rates, and in general to comply with all regulations affecting common carriers. It was argued by government counsel that this Valuation Order was no hardship on the Valvoline and could be easily complied with. In the first place, it would be very difficult for the Valvoline to furnish the necessary data. Its lines were laid over a period of fifty years without any definite plan in mind (R. 69). No adequate records were kept of location of lines, rights of way and other data (R. 70), and it would require a large amount of work to satisfy the Interstate Commerce Commission.

In the second place it definitely fixes the status of the

Valvoline as a common carrier, for the primary use of valuations under the Act is for rate making purposes.

N. Y., N. H. & H. R. Co. v. *I. C. C.*, 55 F. (2d) 1028-1034, 287 U. S. 178-200, 53 S. Ct. 106, 77 L. Ed. 248; and the Act makes the valuation mandatory for all common carriers with a few minor exceptions that have no application here.

(f) Valuation—The Provisions of the Act Are Not Severable

This case was submitted to the District Court on the record before the Interstate Commerce Commission. No additional testimony was taken. The Valvoline questioned the authority of the Interstate Commerce Commission to compel it to comply with Valuation Order No. 26. In de-[fol. 1254] ciding this case the District Court undertook to sever the provisions of the Act and restrict the decision to compliance with the Valuation Order. The Court said: "We therefore decide that the Valvoline is subject to the provisions of Section 19a of the Interstate Commerce Act authorizing the Commission to value its pipe line property and requiring it to cooperate by furnishing relevant data. That is the only question involved in the case. The case does not involve, and we of course do not decide, any question as to the extent of the other obligations which may have been imposed upon the Valvoline by the Act" (R. 119). The court must have given heed to this statement in the brief of defendant, "The Commission's order under attack requires nothing more of the petitioner than the furnishing of certain information." These honeyed words are only sugar coating for the bitter pill. The decision requiring data for valuation is based on the finding of the Commission that the Valvoline is a common carrier. The District Court now limits its decision thus (R. 119-120):

> "The Valvoline Oil Company is a common carrier engaged in the interstate transportation of oil by pipe line within the meaning of the Interstate Commerce Act *to the extent* that it is subject to the provisions of Section 19a of the Act." (Italics are added.)

Does the court undertake to create a new class of common carriers subject only to certain provisions of the act or does this statement show that the District Court could not go the whole way and declare the Valvoline a common

carrier in all respects? The Valvoline has no reason to refuse to supply any information it has or that it can reasonably secure for the Commission, nor does it complain of the order to avoid taxation because it now pays the tax levied on oil transported by pipe line (R. 50). The Valvoline's complaint is that classed as a common carrier it is [fol. 1255] forced to supply this data and that it will be subject to all other regulations of the Commission applicable to common carriers in general. The three judge court with its own knowledge of the oil business and its operations in the Pennsylvania field refused to say that the Valvoline was a common carrier for all purposes under the Act. We contend the court fell in error in trying to sever the provisions of the Act. If the facts developed in the testimony do not warrant the finding that the Valvoline is a common carrier for all purposes, then it was the court's duty to restrain the Interstate Commerce Commission from issuing any order based on such a finding.

The Interstate Commerce Commission seemed also to entertain some doubt as to the application of this Act to the Valvoline. After concluding that the Act intended to convert all interstate pipe lines to common carriers without regard to their previous status the report says (R. 15):

> "Whether Congress could lawfully so act is not for us to decide. The Interstate Commerce Commission is an administrative body which may not presume to annul by interpretation an act of the federal legislature. As the result of our investigation certain pipe line companies, parties to the proceeding, were ordered to file schedules of rates and charges for the interstate transportation of oil in compliance with the provisions of the Act. *The Valvoline was not named in our order although its lines at that time extended across the Pennsylvania West Virginia State line.*" (Italics are added.)

The investigation referred to was summarized in a "Report on Pipe Lines," House Report No. 2192, 72nd Congress, prepared by Mr. Walter M. W. Splawn.

The failure to include the Valvoline in the list of common carriers is strong indication that at that time the Interstate Commerce Commission concluded, after investigation, that the Valvoline was not a common carrier. There are no [fol. 1256] facts or circumstances regarding the company's

operations in the intervening years to change the situation. It is interesting to note that during the hearing before the Interstate Commerce Commission Mr. Eastman asked counsel for the Commission what benefit was to be had from the valuation of the Valvoline as it was now paying the pipe line tax. Counsel responded that there was no apparent benefit to be derived but that the act was mandatory. Why, then, should we strain the construction of the act to bring the Valvoline within its provisions without benefit to the public and to the great detriment of the company, forcing it into the common carrier class.

II

Are These Provisions of the Interstate Commerce Act as Applied to the Valvoline in Violation of the Constitution?

(a) Interstate Operations of Valvoline Before Hepburn Amendment

Stress has been laid on the fact that Valvoline did not lay any pipe lines across state lines until 1913 (R. 44). This is true but it is also true that Valvoline has been engaged in interstate transportation for over fifty years. These shipments came under the classification in the amendment of shipments "partly by pipe line and partly by rail." The Valvoline's first pipe lines were laid near Warren, Pennsylvania, about 1890 or before (R. 66). A large part of this oil was piped to a loading rack at Tiona, Pennsylvania, and shipped from there by rail to the company's refinery at Edgewater, New Jersey (R. 66). This method of interstate shipments was well established and in operation long before the Hepburn amendment of 1906.

[fol. 1257] ### (b) Confiscation of Property by Change of Status

To change the private status of the Valvoline to that of a common carrier under the Act will involve expenses of operation and equipment estimated from $200,000 to $300,000 (R. 42). This does not include the additional cost of any increase in lines or storage if other oils not up to Valvoline specifications, known as "pipe line crude" are carried for the public (R. 43). To meet the demands of a public carrier requires a complete change not only in the equip-

ment for pumping oil through the lines but also the erection of storage tanks and a rearrangement of the method of handling crude at the refineries. Thus the conversion of a private operation to public use becomes a taking without "Due Process." *Adair* v. *U. S.*, 208 U. S. 161.

The recent proposed legislation for the divorcement of pipe lines from refineries (Senate Bill No. 2009 on which the Senate Interstate Commerce Committee held hearings, and the Borah Gillette Bill S. 2181 introduced April 17, 1939) serves as an illustration of what may be expected if the Valvoline is held to be a common carrier. A separation of the Valvoline's pipe lines from the refinery operation would render the pipe lines unprofitable and practically valueless. Like the Hepburn amendment aimed at monopolistic operations of the large carriers, this new legislation is aimed to cure some similar evils. The Valvoline's operation is so small it is almost negligible. It has no means or method to compel any producer to deal with it. Any reason for divorcement of large carriers and refineries is entirely lacking in the Valvoline operation, yet such legislation might apply to it if the Valvoline is determined to be a common carrier for all purposes.

[fol. 1258] (c) The Status of the Valvoline Cannot be Made by Legislative Fiat

We have undertaken to show that the Valvoline's operation was interstate before the Hepburn amendment of 1906. Thus a purely private interstate pipe line operation would by legislative fiat be stripped of its private character and declared to be a common carrier. With the resultant expense to operate as a common carrier and the damage sustained it becomes an appropriation of private property without compensation and without due process of law.

In the *Pipe Line Cases, supra*, Chief Justice White in a concurring opinion stated that there was no power under the Constitution without the exercise of the right of eminent domain to convert a private business into a public one without the company's consent.

In *Producers Transport Co.* v. *R. R. Commission of California*, 251 U. S. 228, affirming 176 Calif. 499, Mr. Justice Van Devanter said:

> "It is of course true that if the pipe line was constructed solely to carry oil for particular producers

> under strictly private contracts and never was devoted by its owner to public use, that is to carrying for the public, the state could not, by mere legislative fiat or by any regulating order of a commission convert it into a public utility or make its owner a common carrier; for that would be taking private property for public use without just compensation which no state can do consistently with the 'due process of law clause' of the 14th Amendment."

In another California case, *Associated Pipe Line Co.* v. *Railroad Commission*, L. R. A., U. S. 1918C 849, 169 Pac. 62, the statute was held in violation of the due process clause of the 14th Amendment where it undertook to convert a private pipe line into a common carrier. The company in [fol. 1259] question had never exercised the right of eminent domain nor transported oil for hire. It was held that the use by the owner determined its status and that to declare such a company a common carrier was to deprive it of its rights and to dedicate it to public use without due compensation.

A private carrier cannot by mere legislative command be converted against its will into a common carrier. *Frost* v. *R. R. Commission*, 47 A. L. R. 457, 271 U. S. 583, 70 L. Ed. 1101, 46 S. Ct. 605; *Dairymen's Cooperative Assn.* v. *Public Service Co.*, 115 Pa. S. C. 100-112, 318 Pa. 381, 177 Atl. 770; *State Ex. Rel. Fulton* v. *Ives*, 123 Florida 401, 167 Southern 394.

In *Smithennan & McDonald Inc.* v. *Mansfield Hardwood Lumber Co.*, 6 F. (2d) 29, construing an Arkansas statute the court said:

> "The latter (the statute) of course is limited to common carriers and does not extend to transportation for the sole purpose of conducting material to and from its own mill."

Here we have a company that embarked long ago in a purely private business and has never changed its policy. Its investments were made long before pipe lines became the subject of interstate commerce regulation. As proof that the Valvoline does not deny the governments exercise of lawful authority over pipe lines it should be noted that the Valvoline pays a tax (R. 50) imposed upon "all transportation of crude petroleum and liquid products thereof by pipe line". Revenue Act of 1932, Sec. 731(a), 47 Stat.

275, and the prior Revenue Act of 1918, Sec. 50(d), 40 Stat. 1103, upon all tranportation of oil by pipe line.

The Act further provides (A-2)—"In case no charge for transportation is made either by reason of ownership of the commodity transported or for any other reason, a tax equivalent to 4 per centum of the fair charge for such trans-[fol. 1260]portation, to be paid by the person furnishing the transportation;" (B-2) "If no such rates or tariffs exist then at the basis of actual *bona fide* rates or tariffs of other pipe lines for like service". These sweeping provisions affect private carriers and common carriers alike.

Conclusion

The issue here is clearly defined. The order of the Commission and its authority to make the order are based upon the finding that the Valvoline is a common carrier. While such a finding presumably might not at present interfere with the company's operation it cannot be predicted, as shown by the pending legislation on divorcement of pipe lines, in what manner or how seriously the Valvoline may be involved. The Valvoline's operation has not in all the years of operation transgressed any rights of others nor has there ever been any complaint about its operations. These facts only sustain our contention that its purchase and piping of oil is a private transaction between buyer and seller in which the public has no interest.

We, therefore, respectfully submit that this finding of the Commission and the District Court should be set aside and a permanent injunction granted.

Harry S. Elkins, J. Campbell Brandon, Attorneys for Valvoline Oil Company, Appellant.

[fol. 1260-a] In the United States District Court for the Western District of Oklahoma

Clerk's Certificate

I, Theodore M. Filson, Clerk of the United States District Court for the Western District of Oklahoma, do hereby certify that the attached and foregoing are the Petitioner's original exhibits "C", "D", "F", "G" and Number X, as called for in the plaintiff's praecipe for record, and as included in order of this Court directing the Clerk to transmit

the original of such exhibits to the Supreme Court of the United States, in Case No. 1559-Civil, Champlin Refining Company, Petitioner vs. United States of America, et al., Respondents.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Oklahoma City, in said District this 8th day of May, A. D. 1945.

Theodore M. Filson, Clerk, by Margaret P. Blair, Deputy. (Seal.)

[fol. 1261] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS RELIED UPON BY APPELLANT—Filed May 18, 1945

The Champlin Refining Company, Appellant, will rely upon the following points in brief and oral argument before this Court on its appeal in the above entitled cause:

I

The Champlin Refining Company in the operations of its products pipe line is not a common carrier under the terms and provisions of the Interstate Commerce Act and its amendments.

[fol. 1262]

II

It has never engaged in transportation of petroleum products for hire in interstate commerce.

III

The Interstate Commerce Commission is without authority in law to direct the Champlin Refining Company's compliance with its Orders No. 26 (Exhibit 45) and No. 27 (Exhibit 46) with relation to the Champlin products pipe line, the operation of which is the subject of this litigation.

IV

The Champlin Refining Company is a private corporation only, and has never acted as; nor held itself out to be, nor has it ever been requested to become, a common carrier, or to perform any public service.

V

There is no evidence to support the order of the Interstate Commerce Commission or the approval thereof by the majority of the trial court.

VI

The provisions of the Interstate Commerce Act as construed and applied to the operations of Appellant's products [fol. 1263] pipe line, by the majority of the trial court, are unconstitutional and in derogation and violation of the guaranties of the Fifth Amendment to the Constitution of the United States.

VII

Appellant contends, however, that the question of unconstitutionality does not properly present itself for the reason that the provisions of the Interstate Commerce Act do not apply to the operations of Appellant's products pipe line.

VIII

The majority of the trial court erred as a matter of law in construing the Interstate Commerce Act to apply to and bring within the jurisdiction of the Interstate Commerce Commission the operations of Appellant's products pipe line.

IX

The majority of the trial court erred as a matter of law in failing and refusing to extend to Appellant the benefit of the rule of exception granted the *Uncle Sam Oil Company* in the *Pipe Line cases*, 234 U. S. 548, the principle of which exception is determinative of the question here.

[fol. 1264]

X

The majority of the trial court also erred as a matter of law in failing and refusing to extend to Appellant the benefit of the rule announced in *Pennsylvania Ry. Co.* v. *Public Utilities Commission*, 298 U. S. 170, the principle of which decision is further determinative of the question here.

XI

The majority of the trial court also erred as a matter of law in failing and refusing to extend to Appellant the bene

fit of the rule announced in *Producers Transportation Co. v. Railroad Commission of the State of California*, 251 U. S. 228, the principle of which decision is further determinative of the question here.

XII

The Appellant's petition for rehearing in the trial court should have been granted and allowed.

XIII

Appellant should have been granted injunctive relief as prayed in its amended petition.

[fol. 1265] XIV

The final decree entered by the majority of the trial court is unsupported in fact and void as a matter of law, and should be vacated and set aside by this Court.

Harry O. Glasser, Dan Moody, Counsel for Appellant.

Service upon each Appellee of a copy of the foregoing Statement of Points Relied Upon is hereby acknowledged.

Dated at Washington, D. C., this 18 day of May, 1945.

Hugh B. Cox (A. Q.), Acting Solicitor General;
Nelson Thomas, Counsel for Interstate Commerce Commission.

[fol. 1266] [File endorsement omitted.]

[fol. 1267] SUPREME COURT OF THE UNITED STATES

APPELLANT'S DESIGNATION OF PARTS OF RECORD TO BE PRINTED —Filed May 17, 1945

Appellant designates the entire record which has been transmitted by the Clerk of the District Court of the United States for the Western District of Oklahoma to be printed for the consideration of the points relied upon by Appellant, with the following exceptions which shall not be printed, except such portions thereof as may be specifically identified for printing.

(1) Omit in printing Exhibits "B," "D," "E" and "F" to petition filed in lower court, pp. 53-112, inc., same having been designated for printing elsewhere in the record.

(2) Order for associate judges, p. 113.

(3) Application for authority to transmit originals of certain exhibits, p. 304.

(4) Appeal bond, p. 337.

(5) Omit transcript of proceedings of October 12, 1944, pp. 360-503, inc. Except print the whole of pp. 413-423, inc. and p. 447, the first 9 lines of p. 448, and commencing with line 4 all of the balance of p. 452, the whole of pp. 453, 454, 455, 456 and 457 to line 14, inc.

[fol. 1268] (6) Exhibit 16, being a certified copy of Articles of Incorporation (and related papers) of the Champlin Refining Company, except that part of page 844 thereof identified as **3,, which recites the purposes of organization of the Champlin Refining Company, which portion of such page shall be printed, pp. 843-881, inc.

(7) Exhibit 17, being a certified copy of Articles of Incorporation (and related papers) of Cimarron Valley Pipe Line Company, pp. 882-885, inc.

(8) Exhibit 18, being a certified copy of Amended Articles of Incorporation (and related papers) of Cimarron Valley Pipe Line Company, except that part of page 887 thereof identified as **3., which recites the purposes of organization of the Cimarron Valley Pipe Line Company, which portion of such page shall be printed, pp. 886-889, inc.

(9) Exhibit 19. Appointment of service agent in Oklahoma by Cimarron Valley Pipe Line Company, p. 890.

(10) Exhibit 20. Increase in capital stock of Cimarron Valley Pipe Line Company, p. 891.

(11) Exhibit 21. Authorization of Cimarron Valley Pipe Line Company to do business in Kansas, p. 892.

(12) Exhibit 22. Appointment of resident agent in Nebraska by Cimarron Valley Pipe Line Company, pp. 893-894, inc.

(13) Exhibit 23. Qualification by Cimarron Valley Pipe Line Company to do business in Nebraska, p. 895.

(14) Exhibit 26. Form of application used by Cimarron Valley Pipe Line Company and filed with certain boards

of county commissioners when pipe line was being planned and constructed, pp. 901-903, inc.

(15) Exhibit 27. Form of orders issued upon applications covered by Exhibit 26, pp. 904-906, inc.

(16) Exhibit 31. Form of application for authority to construct pipe line over certain highways in certain named counties in Nebraska, pp. 918-920, inc.

[fol. 1269] (17) Exhibit 32. Forms of orders issued in certain counties named therein, setting forth conditions assumed by Appellant in crossing certain counties, pp. 921-923, inc.

(18) Exhibit 38. A letter addressed to, and permit received from, the War Department, pp. 947-950, inc.

(19) Exhibit 41. Except first three pages thereof, to-wit, pages 957, 958 and 959, which are to be printed. Application filed with Iowa Commerce Commission (and related papers) for authority to maintain and operate pipe line through certain counties, pp. 957-979, inc.

(20) Exhibit 42. Permanent permit and related papers for Rock Rapids lateral pipe line, pp. 980-899, inc.

(21) Exhibit 43. Letter of October 7, 1941, p. 989.

(22) Exhibit 44. Copy of permanent permit No. 157 issued by the State of Iowa Commerce Commission with related papers, pp. 990-999, inc.

(23) Exhibit 47. Letter of G. E. Leverton, and related papers, pp. 1040-1043, inc.

(24) Exhibit 48. Letter of G. E. Leverton, and related papers, pp. 1044-1059, inc.

(25) Order extending effective date of order for compliance, Sept. 2, 1944, p. 1082.

(26) Exhibit "X" being original refused report tendered Interstate Commerce Commission by Appellant.

Appellant agrees that Appellees may file in this Court, to be printed as a part of the record, copies of their proposed findings of fact and conclusions of law which were submitted to the trial court and inadvertently omitted in the transcript transmitted to this Court, and that the whole of the transcript which has been transmitted to this Court,

shall be retained as a part of the record in this case, and [fol. 1270] may be referred to by the Supreme Court, and by counsel for either party in their briefs and oral argument.

Dated at Washington, D. C. this 16th day of May, 1945.

Harry O. Glasser, Dan Moody, Counsel for Appellants.

Service upon each Appellee of a copy of the foregoing Designation of Record is hereby acknowledged.

Dated at Washington, D. C., this 16th day of May, 1945.

Hugh B. Cox (A. Q.), Acting Solicitor General; Nelson Thomas, Counsel for Interstate Commerce Commission.

[fol. 1271] [File endorsement omitted.]

[fol. 1272] IN THE SUPREME COURT OF THE UNITED STATES

APPELLEES' AMENDED DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed June 28, 1945

In lieu of their designation of additional parts of record to be printed, dated May 26, 1945, and heretofore filed in the above-styled cause, appellees hereby designate for printing the following parts of the record transmitted by the Clerk of the District Court of the United States for the District of Oklahoma to the Clerk of the Supreme Court of the United States, in addition to those parts heretofore designated by appellant under date of May 16, 1945:

1. In lieu of printing in full Exhibit B to the petition filed in the District Court, being Valuation Order No. 26 revised, of the Interstate Commerce Commission, effective December 31, 1934 (appearing at pages 53-54 of the record), insert an appropriate reference to the place where said order is printed in full elsewhere.

2. Appendix A to Exhibit E to petition in the District Court, being the report of Division 2 of the Interstate Commerce Commission in Valuation Docket No. 1267, dated December 14, 1942 (appearing at pages 77-88 of the record, prints thereof to be furnished by appellant).

3. Appendices A and B to Exhibit F to petition in the District Court, being the report and order of the Interstate Commerce Commission on reargument in Valuation. [fol. 1273] Docket No. 1267, dated June 12, 1944 (appearing at pages 100-111 of the record, prints thereof to be furnished by appellant).

4. Order convening three judge court (appearing at page 113 of the record).

5. In connection with the petition for rehearing and Exhibits A, B and E thereto, which appear, respectively, at pages 146, 167, 227 and 291 of the record, Exhibits C, D, F and G thereto should be printed in proper alphabetical order, these latter exhibits not having been designated by page numbers in the transcript of record as transmitted, and consisting, respectively, of the briefs of the United States and the Interstate Commerce Commission in the *Pipe Line Cases*, and the briefs for the United States and the Valvoline Company in the *Valvoline Case*.

6. Application for authority to transmit originals of certain exhibits (appearing on page 304 of the record).

7. From line 13 of page 361 to and including line 3 of page 362 of the transcript, and pages 447 to 452, inclusive, of the transcript of proceedings of October 12, 1944.

8. In connection with Exhibit 15 of the proceedings before the Interstate Commerce Commission, print the alphabetically numbered exhibits from A through T, both inclusive (at pages 799-842, inclusive, of the record).

9. Exhibit 21, Cimarron Company's authority to operate in Kansas (at page 892 of the record).

10. Exhibit 23, qualification by Cimarron Company to do business in Nebraska (at page 895 of the record).

11. Exhibit 26, forms of application used by Cimarron Company filed with county commissioners and boards (pages 901 to 903, inclusive, of the record).

12. Exhibit 27, form of orders issued upon applications upon forms set out in Exhibit 26, supra (pages 904-906, inclusive, of the record).

[fol. 1274] 13. Exhibit 31, form of application for authority to construct pipe line over certain highways in Nebraska (pages 918-920, inclusive, of the record).

14. Exhibit 32, forms of orders issued in certain counties relative to conditions assumed by appellant (pages 921-923, inclusive, of the record).

15. Exhibit 38, letter addressed to and permit received from War Department relative to Missouri River crossings (pages 947-950, inclusive, of the record).

16. Exhibit 42, permanent permit and related papers for Rock Rapid lateral pipe line (pages 980-988, inclusive, of the record), omitting description of property beginning line 11 of page 981, continuing to and including line 17 of page 987.

17. Exhibit 43, letter of October 7, 1941 (page 989 of the record).

18. Exhibit 44, permanent permit No. 157, issued by Iowa Commerce Commission (pages 990-999, inclusive, of the record), omitting the part thereof beginning line 12, on page 992, and ending with line 37 on page 998.

19. Exhibit 47, letter of G. E. Leverton and related papers (pages 1040-1043, inclusive, of the record).

20. Findings of fact and conclusions of law requested by defendants received as part of the record herein, under additional certificate.

21. Portion of transcript of proceedings in District Court, April 13, 1945, received as part of record herein, under additional certificate, on June 11, 1945.

This 27th day of June, 1945.

Charles Fahy, Solicitor General; Wendell Berge, [fol. 1275] Assistant Attorney General; Edward Dumbauld, Special Assistant to the Attorney General; Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission; Nelson Thomas, Attorney, Interstate Commerce Commission.

I certify that copies of the foregoing designation were this day mailed to the following persons: Harry O. Glasser, Esq., Attorney at law, Enid, Oklahoma; Dan Moody, Esq., Norwood Building, Austin, Texas.

This 27th day of May, 1945.

Edward Dumbauld, Special Assistant to the Attorney General.

[fol. 1276] [File endorsement omitted.]

[fol. 1277] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—June 18, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

Mr. Justice Roberts took no part in the consideration of this question.

[fol. 1277a] [Endorsed on Cover:] File No. 49722. Western Oklahoma. D. C. U. S. Term No. 75. Champlin Refining Company, Appellant, vs. The United States of America, and Interstate Commerce Commission. Filed May 14, 1945. Term No. 75 O. T. 1945.

ADDITION TO TRANSCRIPT

[fol. 966] UNITED STATES SUPREME COURT

No. ——

CHAMPLIN REFINING COMPANY, Appellant,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Appellees

Appeal from the United States District Court for the Western District of Oklahoma

[fol. 967] H. B. 59-80-213.

DEPARTMENT OF JUSTICE, WASHINGTON, D. C.

October 11, 1941

Valvoline Pipe Lines
P. O. Box 911
Butler, Pennsylvania

DEAR SIR:

I have your letter of October 7, 1941, showing that all recent movements of crude oil over your crude oil pipe line, from points in West Virginia to points in Pennsylvania, have been oil which you purchased from others.

In *Valvoline Oil Company* v. *United States*, 308 U. S. 141 (decided November 1939), your pipe line was held to be a common carrier under Section 1 of the Interstate Commerce Act and you were required to comply with the Valuation Order of the Commission.

Please advise me whether you have filed schedules of rates with the Interstate Commerce Commission in compliance with Section 6 (1) and (7) of the Interstate Commerce Act, and Section 1 of the Elkins Act. If not, do you care to state the reasons, if any, why such schedules have not been filed?

Yours very truly, Thurman Arnold, Assistant Attorney General.

Phone information to Vogale 10/14/41 who suggests follow Brandon's advice. J. J. D. 10/14/41.

[fol. 968] CLERK'S CERTIFICATE TO ADDITION TO TRANSCRIPT

UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

I, Theodore M. Filson, Clerk of the United States District Court for the Western District of Oklahoma, do hereby certify the above and foregoing to be a photo copy of "Plaintiff's Exhibit 1," being an original letter which was permitted to be identified and offered, but not received in evidence in the trial of Case No. 1559-Civil, Champlin Refining Company, Petitioner vs. United States of America, Defendant, as shown by the transcript of the record as printed in the Supreme Court of the United States, No. 75 October Term 1945, pp. 131 and 132, which said exhibit is hereby certified to be a true, complete and correct copy of the original thereof, as an addition to the Transcript of Record on Appeal to the United States Supreme Court, which exhibit was inadvertantly omitted by this office, from the original transcript; said exhibit being now transmitted at the request of counsel for the Champlin Refining Company.

That by the order of the trial court (R. No. 75 October Term 1945, p. 133) the appellant was permitted to withdraw the original letter offered in evidence and substitute photo copy in lieu of said original.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Oklahoma City, in said District, this 15 day of March 1946, A. D.

Theodore M. Filson, Clerk, By Margaret P. Blair, Deputy. (Seal.)

FILE COPY

Office - Supreme Court, U. S.
FILED
MAY 14 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. [redacted] 21

CHAMPLIN REFINING COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

STATEMENT AS TO JURISDICTION

HARRY O. GLASSER,
DAN MOODY,
Counsel for Appellant.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
Date of judgment and of application for appeal	2
Nature of case and rulings below	2
Cases sustaining jurisdiction	8
Appendices:	
A—Valuation order of I. C. C. No. 26	9
B—Valuation order of I. C. C. No. 27	10
C—Findings of fact and conclusions of law	11
D—Decree	18
E—Opinion	19

Cases Cited

The "Pipe Line Cases", 234 U. S. 548, 58 L. Ed. 1459	8
Valvoline Oil Co. v. *United States*, 308 U. S. 141, 84 L. Ed. 150	8

Statutes Cited

28 U. S. C. 41(28)	2
28 U. S. C. 44	2
28 U. S. C. 47	2
28 U. S. C. 47(a)	1
28 U. S. C. 345	2

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559

CHAMPLIN REFINING COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent;

INTERSTATE COMMERCE COMMISSION,
Intervener

JURISDICTIONAL STATEMENT BY PETITIONER-APPELLANT UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

The petitioner-appellant respectfully presents the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above entitled cause sought to be reviewed.

A. Statutory Provisions

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539, as amended March 2, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. The Statute of a State, or Statutes or Treaty of the United States, the Validity of Which Is Involved

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved.

C. Date of the Judgment or Decree Sought to Be Reviewed and the Date upon Which the Application for Appeal Was Presented.

The decree sought to be reviewed was entered on April 16, 1945. The petition for appeal was presented and allowed on April 16, 1945. On the same day an assignment of errors was filed.

D. Nature of Cause and Rulings Below

This is an appeal from a final decree of a specially-constituted three-judge District Court of the United States for the Western District of Oklahoma, entered April, 1945, dismissing and denying the petition of the Champlin Refining Company to enjoin and annul a certain order of the Interstate Commerce Commission.

The order in question was entered on July 12, 1944 in a proceeding entitled, Champlin Refining Company, Valuation of Pipe Line, Valuation Docket No. 1267, reported 49 Valuation Rep. 542-549 inc.

In the report of the Commission, *supra*, in support of its complained of order, it was in part said:

"In the original report in this proceeding, 49 Val. Rep. 463, division 2 found that the Champlin Refining Company, hereinafter generally referred to as the Champlin, is engaged in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act. No order was entered, but the Champlin was directed to comply with orders under section 19a of the act, previously served upon it, and to furnish promptly the information called for therein. Such information is required for our use in valuing the properties of common carriers by pipe line. The Champlin thereupon filed a petition for rehearing, reargument, and reconsideration. The petition was granted, except as to rehearing, and reargument was heard.

"There is no dispute as to the statements of fact in the original report, but they will be repeated here in sufficient detail to furnish a clear understanding of the jurisdictional question which was the basis of the reargument. It is the position of the Champlin that, granting the facts to be as stated, it is not a pipe-line company as that term is defined in the Interstate Commerce Act; it is not engaged, in the operation of its pipe line, in interstate commerce as that term is defined in the Interstate Commerce Act; and it is not a common carrier.

"The Champlin is a corporation of the State of New Mexico, authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell, and deal in the refined products of petroleum. The pipe line which the Champlin owns and operates is a 516-mile gasoline pipe-line system consisting of

welded 6-inch pipe extending from Enid, Okla., to Rock Rapids, Iowa. In connection with the pipe line, the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kans., Superior, Nebr., and Rock Rapids. The construction of the portion of the pipe line from Enid through Hutchinson to Superior, 256 miles, and the terminal facilities at Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at Rock Rapids were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

"The Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, oil trucks, and other equipment, all more specifically described and enumerated in the original report. It also owns all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid.

"In disposing of the petroleum products produced by it at its refinery at Enid, the Champlin uses two types of sales; one is known as the spot-market or date-of-shipment sale, the other, or contract sale, is based on yearly contracts with its customers. The spot, or f.o.b., price of the product at Enid is normally, based upon the Chicago Journal of Commerce 'Group 3' (Oklahoma) prices as shown in the issue of the Thursday preceding date of shipment. These prices are made effective at 7 a.m. Friday morning and remain in force until the next succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The delivered price includes, in addition to the spot or f.o.b. charge

at the Enid refinery, a charge called a differential which is adjusted so that the through charge to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe-line terminal.

* * * * * * *

"The facts were summarized in the original report in the following language:

'Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank-car racks and is not delivered directly from the pipe line in any instance; no tariffs have been filed with this Commission or with any State commission or regulatory body; and the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line.'

* * * * * * *

"We find that the Champlin is a common carrier of refined petroleum products by pipe line and that it is subject to the provisions of the Interstate Commerce Act. The findings of division 2 in the original report are accordingly affirmed.

* * * * * * *

"Chairman Patterson and Commissioner Porter dissent." The order so entered, among other things, provides:

"* * * * * * *

"It is Ordered, That the said Champlin Refining Company comply with the provisions of said Valuation Orders Nos. 26 and 27 within 90 days from the date of service hereof and as of December 31, 1943."

A copy of Valuation Order No. 26 is hereto attached. It includes detailed specifications and instructions for preparing maps, data, statement of corporate history, development of fixed physical property, schedules of lands, inventory of properties and other data required by the order to be filed with the Interstate Commerce Commission. The specifications and instructions are too voluminous to be copied as a part of this jurisdictional statement.

A copy of Valuation Order No. 27 is also hereto attached. It includes detailed instructions for preparing and filing the accounts and fact statements required by the order to be filed with the Interstate Commerce Commission. The instructions are too voluminous to be copied as a part of this jurisdictional statement.

On August 10, 1944 suit was filed by petitioner in the District Court of the United States for the Western District of Oklahoma, Civil No. 1559, challenging the authority of the Interstate Commerce Commission to enter the order complained of, supra, and praying,

"* * * * * * *

"2. That process may issue against the respondent, The United States of America, and that after not less than five (5) days' notice to the Interstate Commerce Commission and to the Attorney General of the United States, as provided by law, a hearing be held at Oklahoma City, Oklahoma, and an interlocutory injunction

be issued, staying and suspending the said order of the Interstate Commerce Commission.

"3. That upon final hearing of this cause a permanent injunction issue decreeing that said order of the Commission is null and void and its enforcement, execution and operation forever enjoined, and that The United States of America be restrained from issuing any further orders, instituting or further prosecuting any proceeding to enforce the aforesaid order or any subsequent orders relating thereto.

"* * * * * * * *"

The case was submitted on final hearing on October 12, 1944 before a specially-constituted three-judge court.

The questions presented by this appeal are substantial, and will determine whether a refiner of crude oil products may, without invoking the exercise of the right of eminent domain, but solely by the use of privately-obtained right-of-way, construct over and across state lines, a private seamless, welded steel products pipe line as a plant facility for the moving of such refiner's refinery products *only*, out of refinery operational tanks, into storage tanks distantly located in other states, for future sale by such refiner from such storage tanks only, without thereby dedicating such pipe line to the use of its competitors as a common carrier for hire, engaged in interstate transportation within the jurisdiction of the Interstate Commerce Commission.

A majority memoranda opinion was filed on March 21, 1945 upon which Circuit Judge Murrah and District Judge Chandler concurred in dismissing the complaint of the Champlin Refining Company, to which action District Judge Vaught filed a dissenting opinion.

The Champlin Refining Company thereupon filed its Petition for Rehearing, with certain exhibits thereto, which

was on April 13th, 1945 denied and overruled, to the entry of which order Judge Vaught dissented.

Special majority findings of fact and conclusions of law were entered and filed on April 16, 1945, in which conclusions of law this petitioner affirms the majority of the court failed to follow controlling decisions of this court.

Judge Vaught noted his dissent to the conclusions of law so entered and filed.

E. Cases Sustaining the Supreme Court's Jurisdiction on Appeal

The "Pipe Line Cases," 234 U. S. 548, 58 Law Ed. 1459.
Valvoline Oil Co. v. United States, 308 U. S. 141, 84 Law Ed. 150.

F. Decree and Findings of Fact and Conclusions of Law of the District Court

Appended to this statement is a copy of the majority findings of fact and conclusions of law of the District Court and copy of decree of said court sought to be reviewed, together with copy of the majority opinion and copy of minority opinion.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated April 16th, 1945.

HARRY O. GLASSER,
DAN MOODY,
Counsel for Champlin Refining Company.

APPENDIX A

Valuation Order No. 26—Revised

INTERSTATE COMMERCE COMMISSION

Washington, D. C.

ORDER

At a General Session of the Interstate Commerce Comsion, Division 1, held at its office in Washington, D. C., on the 31st day of December, A. D. 1934.

The subject of specifications for maps, charts, and schedules to be prescribed for and applied by common carriers by pipe lines being under consideration:

It is ordered, That the specifications for maps, charts, and schedules, Sections A to F, inclusive, a copy of which is filed with and made a part of this order, are hereby approved and adopted.

It is further ordered, That the said specifications for maps, charts, and schedules be, and the same hereby are, prescribed for the use of all pipe line companies subject to the provisions of the act to regulate commerce, as amended, in the preparation of all maps, charts, and schedules which shall be required to be prepared for or filed with this Commission in accordance with section 19a of the act to regulate commerce; that each and every company and each and every receiver or operating trustee of any such company be required to prepare and furnish to the Commission all maps, charts, and schedules in conformity herewith, and that a copy of said specifications be sent to each and every such company and to each and every receiver or operating trustee of any such company.

It is further ordered, That every pipe line company and each and every receiver or operating trustee of any such company shall prepare and furnish to the Commission in accordance with such specifications complete maps, charts, and schedules of its property as it exists on the date assigned for the valuation of that property within 60 days after such date of valuation; provided, however, that no such company shall be required to prepare or file any map,

chart, or schedule within less than 60 days from the receipt of written notice from the Director of the Bureau of Valuation, of this Commission, stating the date of valuation for such company.

It is further ordered, That Valuation Order No. 26, effective September 10, 1934, be, and it is hereby, superseded and cancelled as of the effective date of this order.

By the commission, division 1.

GEORGE B. MCGINTY,
Secretary.

[SEAL.]

APPENDIX B

Valuation Order No. 27

INTERSTATE COMMERCE COMMISSION

Washington, D. C.

ORDER

At a General Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 12th day of April, 1935.

The subject of preparing a field inventory of the property of all common carriers by pipe lines for purposes of valuation under Section 19a of the Interstate Commerce Act, as amended, being under consideration:

It is ordered, That every common carrier owning or operating a pipe line whose property is subject to valuation under Section 19a of the Interstate Commerce Act, as amended, and every receiver or operating trustee of such a carrier shall prepare in duplicate and file with the Commission the original copies of a complete inventory of its property, except land, showing the quantities, units, and classes or kinds of property and the condition thereof.

It is further ordered, That such inventory shall be made as of such date as shall be prescribed by the Director of Valuation, shall begin within 30 days from the receipt from the Director of Valuation of written notice of this order and of the date of valuation prescribed, and shall be completed and filed within such time as he shall require, pro-

vided that he shall allow in all cases a reasonable time for the preparation and filing of such inventory which shall in no case be less than 30 days.

It is further ordered, That regulations and instructions to govern the preparation and filing of inventories of their property by carriers by pipe lines, are hereby approved and adopted, and a copy thereof is attached to and made a part of this order.

It is further ordered, That the said regulations and instructions be, and they are hereby prescribed for the use of all carriers by pipe line subject to the provisions of the Interstate Commerce Act, as amended, and all receivers or operating trustees of such carriers, in preparing and reporting inventories of their property as hereinabove required, and that a copy of said regulations and instructions be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

By the Commission, division 1.

GEORGE B. MCGINTY,
Secretary.

[SEAL.]

Endorsed: Filed in District Court, April 17, 1945.

APPENDIX C

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559—Civil

CHAMPLIN REFINING COMPANY, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent,*

INTERSTATE COMMERCE COMMISSION, *Intervenor.*

Findings of Fact and Conclusions of Law

The above-entitled suit coming on to be heard upon the pleadings and evidence, including the complete record of the proceedings before the Interstate Commerce Commis-

sion, and counsel for all parties having been heard, and briefs received and considered, and the Court being fully advised in the premises, and having made and filed its written opinion, makes the following findings of fact and conclusions of law:

Findings of Fact

1. This suit was brought under the provisions of the Urgent Deficiencies Act of October 22, 1913, to set aside an order of the Interstate Commerce Commission, made on June 12, 1944, in Valuation Docket No. 1267, and was heard and determined by a duly constituted court of three judges pursuant to the provisions of said Act. Said order of the Commission held that petitioner, Champlin Refining Company is a common carrier of refined petroleum products by pipe line and subject to the provisions of the Interstate Commerce Act, and required said company to comply with the provisions of Valuation Orders Nos. 26 and 27 issued by said Commission made pursuant to Section 19a of the said Interstate Commerce Act.

2. The petitioner Champlin Refining Company (hereinafter called the Champlin) is a corporation of the State of New Mexico authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell, and deal in the refined products of petroleum. The pipe line involved in this suit, which the Champlin owns and operates, is a 516-mile petroleum products pipe line system consisting of welded 6-inch pipe extending from Enid, Okla., to Rock Rapids, Iowa. In connection with the pipe line the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa. The portion of the pipe line from Enid through Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at Rock Rapids were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe

line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

3. In addition to the products pipe line involved in this suit, the Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, oil trucks and other equipment including approximately 149 oil wells on 53 leases in Oklahoma, 45 wells on 13 leases in Kansas, and 52 wells on 10 leases in Texas; approximately 75,000 acres of undeveloped leases situated in Oklahoma, Kansas, Texas, New Mexico, Alabama and Illinois; the oil refinery at Enid, Oklahoma, which processes approximately four and a half million barrels of crude oil annually, producing a complete line of refined oil products; 723 tank cars used to transport the products of the refinery to company bulk plants or to jobbers; approximately 316 filling stations and 248 gasoline and oil bulk distribution tanks; motor trucks used to transport products and in the maintenance and operation of its pipe lines, and various other equipment used to promote the producing, purchasing, and refining of crude oil and the marketing of the products thereof.

4. It also owns all of the stock of the Cimarron Valley Pipe Line Company (hereinafter referred to as the Cimarron) which owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid. The pipe line involved in this case is not used as a gathering line and no crude oil is passed through it.

5. Construction of the portion of the products pipe line from Enid to Superior was undertaken by the Cimarron, which was then and now is, a common carrier operating wholly within the State of Oklahoma and a wholly owned subsidiary of the Champlin. The original purpose was to construct and operate a common carrier pipe line, and a certificate to that effect was issued to the Cimarron by the State of Kansas upon application by it. In connection with the acquisition of right-of-way for this construction, the Cimarron instituted four condemnation suits against seven individuals in the district courts in the State of Kansas, but while the suits were pending, satisfactory settlements were

made with the respective contesting owners of the lands, and the suits were dismissed by Cimarron. Before the line was completed or put into operation, the Cimarron on June 10, 1935, executed a bill of sale to the Champlin and made assignment of all rights-of-way that had been acquired in the construction of the property. Since that time the Cimarron has had nothing to do with the further construction or operation of the products pipe line. Construction of the pipe line was completed by Champlin, and operation thereof has been wholly by Champlin.

6. The crude oil from which the products transported by the Champlin in the products pipe line are produced is all originated in the State of Oklahoma and transported to the refinery at Enid by the Cimarron. All of the petroleum products transported through the line involved in this suit are owned by the Champlin. The products are transported beyond the three pipe line terminals f.o.b. either by rail or by common or contract carrier trucks to dealers and distributors, the carrier being designated by the purchaser, except that the Champlin operates five 3,750 gallon capacity transport trucks from the Rock Rapids terminals by which deliveries are made to company-owned outlets in North Central Iowa and Southern Minnesota, and to jobbers and dealers in the same territory. Other transport trucks, not owned by Champlin, are employed by the Champlin to haul refined products from the refinery and the three terminals of the pipe line to the 248 bulk tanks owned. From these bulk tanks local dealers and consumers are served by tank wagons owned and operated by the Champlin. The Champlin operates approximately 316 retail filling stations in the territory served by the pipe line.

7. In disposing of its petroleum products at its three terminals in Kansas, Nebraska, and Iowa, respectively, the Champlin uses two types of sales; one is known as the spot-market or date of shipment sale, the other, known as a contract sale, is based on yearly contracts with its customers. In spot sales the price of the product is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices at Enid as shown in the issue of the Thursday preceding date of sale. These prices are made

effective at 7:00 a. m. Friday morning and remain in force until the succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The price of the product at the pipe line terminal used includes, in addition to the spot or f.o.b. price at the Enid refinery, an additional sum called a differential. Said differential is computed by subtracting from the through railroad freight rate from Enid to final destination (usually the purchaser's point of business) the carrying charges from the pipe line terminal to final destination. In other words, the so-called differential is adjusted so that the through charge to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. Competitive and other conditions sometimes cause departures from the prices arrived at in accordance with the formula above described. Contract sales are likewise made upon the basis of Enid refinery price plus differential.

8. The Champlin is the sole owner of the products transported through its pipe line; it has never transported, offered to transport or been asked to transport any products belonging to any other company or person; its pipe line does not connect with any other pipe line but only with storage tanks at the three terminal points; there are no facilities for putting any petroleum product into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the Champlin's storage tanks by means of truck racks or railroad tank car racks and is not made directly from the pipe line in any instance; no tariffs stating transportation charges have been filed with the Interstate Commerce Commission or with any state commission or regulatory body.

9. The Champlin is a fully integrated oil company owning and operating, either directly or through its subsidiary the Cimarron, every facility necessary for the production and the transportation of crude oil by a gathering pipe line, the refining of such crude oil, the transportation by pipe line of the products of its refinery, and the distribution thereof either through jobbers, or directly, to the consuming public.

10. On August 21, 1941, the Champlin, following a demand by the Interstate Commerce Commission that it file with the Commission facts for valuation of the pipe line, filed with the Interstate Commerce Commission a petition alleging that it is not a common carrier subject to the provisions of the Interstate Commerce Act and praying that the Commission so determine its status. It prayed further that it be relieved of the requirement of filing the valuation reports prescribed by the Commission under the provisions of Section 19a of the Act, which reports had previously been demanded of the Champlin by the Commission's Bureau of Valuation.

The Commission by its Division 2 designated the proceeding in relation to said petition as Valuation Docket No. 1267 and assigned the same for hearing before a Commission examiner. When the matter came on for hearing on November 13, 1941, the Champlin filed an amended petition of the same general purport as that previously filed.

A large volume of evidence both oral and documentary was received at the hearing, and the matter was submitted to Division 2 of the Commission for determination; on December 14, 1942, said division made its report which is set out in the printed pamphlet filed by the plaintiff entitled "Exhibits to Petition", and is officially reported in volume 49 I. C. C. Valuation Reports, beginning on page 463. In said report it was held that the Champlin is engaged in the interstate transportation of refined petroleum products by pipe line, that it is engaged in interstate commerce and is a common carrier subject to the Interstate Commerce Act. The division concluded that no order was required at that time.

Upon petition of the Champlin the Commission reopened the proceeding for reargument before the entire Commission, and the Commission (with two members dissenting) on June 12, 1944, made its Report on Reargument in which the findings made by Division 2 in the prior report were affirmed; and the Commission ordered the Champlin to comply with the provisions of Valuation Orders Nos. 26 and 27. Said report of the Commission on reargument, is correctly set out in petitioner's "Exhibits to Petition" above re-

ferred to, and is officially reported in Volume 49 of I. C. C. Valuation Reports at page 549.

Conclusions of Law

The Court states the following conclusions of law:

1. That the Champlin Refining Company is a pipe line company and is a statutory common carrier of petroleum products by pipe line in interstate commerce, and is subject to the provisions of the Interstate Commerce Act applicable to such common carriers, including, in particular, Section 19a of said Act.

2. That the Interstate Commerce Commission had jurisdiction to enter the order complained of.

3. That the order which the plaintiff here seeks to set aside is a lawful and valid order of the Interstate Commerce Commission.

4. That the findings made in the two reports of the Commission above referred to are sufficient to support the Commission's order and that the evidence received by the Commission is sufficient to support said reports and order.

5. That the Interstate Commerce Act as construed by the Commission in said reports and order is not violative of any provision of the Constitution of the United States and that the Commission's order deprives the plaintiff of no constitutional right.

6. That the bill of complaint herein is without merit and should be dismissed at the cost of the plaintiff.

This 16th day of April, 1945.

Alfred P. Murrah,
United States Circuit Judge.
Stephen S. Chandler, Jr.,
United States District Judge.

I hereby dissent from the foregoing findings of fact and conclusions of law.

Edgar S. Vaught,
United States Dist. Judge.

Endorsed: Filed April 16, 1945, Theodore M. Filson, Clerk.

APPENDIX D

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559

CHAMPLIN REFINING COMPANY, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*;

INTERSTATE COMMERCE COMMISSION, *Intervener*

Final Decree

This cause having come on for final hearing and the Court having handed down its written opinion and made and filed its findings of fact and conclusions of law;

It is ordered, adjudged, and decreed, That the Plaintiff's petition be, and it is hereby, dismissed at the plaintiff's cost.

This April 16th, 1945.

ALFRED P. MURRAH,
United States Circuit Judge;
STEPHEN S. CHANDLER, JR.,
United States District Judge.

I dissent to the entry of this decree.

EDGAR S. VAUGHT,
United States District Judge.

Endorsed: Filed April 16, 1945, Theodore M. Filson, Clerk.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559—Civil

CHAMPLIN REFINING COMPANY, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *Defendant*,

and

INTERSTATE COMMERCE COMMISSION, *Intervening Defendant*

Before Murrah, Circuit Judge, and Vaught and Chandler, District Judges.

CHANDLER, *District Judge*, delivered the opinion of the Court:

This is a suit to enjoin, set aside and annul an order of the Interstate Commerce Commission, dated June 12, 1944, requiring plaintiff to comply with the provisions of the Commission's valuation procedure, as authorized by 49 U. S. C. A. s19A.

This Court's jurisdiction is based upon statutory provisions authorizing suit to be brought against the United States and requiring trial before a court of three judges, 28 U. S. C. A. 41 (28); 28 U. S. C. A. 45, 46, 47 and 48. These provisions refer to suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission.

Plaintiff, Champlin Refining Company, is a corporation organized under the laws of New Mexico with charter powers to produce, buy, sell and transport petroleum, to refine petroleum and to buy, sell and deal in the refined products of petroleum. It operates a refinery at Enid, Oklahoma, being authorized by the State of Oklahoma to do business within its borders.

The crude oil supplied to the refinery is obtained from numerous producing wells throughout the State of Oklahoma, some owned by plaintiff and some owned by other

parties. It is collected and brought to the Enid Refinery by pipe lines of plaintiff's wholly owned subsidiary, Cimarron Valley Pipe Line Company.

The pipe line under consideration extends from plaintiff's refinery at Enid, Oklahoma, across Kansas, Nebraska, and a part of South Dakota, to Rock Rapids, Iowa. The construction of the line was begun by the Cimarron Valley Pipe Line Company in 1935 and completed as far as Superior, Nebraska, in the latter part of that year. The Cimarron Valley Pipe Line Company sold and conveyed its pipe line to Superior, Nebraska, to the Champlin Refining Company on June 10, 1935, before it was ever used. An extension of the pipe line from Superior, Nebraska, to Rock Rapids, Iowa, was completed about May 1, 1940. The total cost of construction as of December, 1940, was $3,198,028.66.

The line is 516 miles long, constructed of six inch welded pipe, is seamless and has no connection with any other pipe line. It is so constructed and equipped that products can be discharged from it only at Hutchinson, Superior and Rock Rapids. Plaintiff operates storage tanks and railroad and truck delivery facilities at these terminals. All products transported are owned by plaintiff and refined at its refinery at Enid, Oklahoma.

Plaintiff sells the products transported over the pipe line in "spot-market" and "contract" sales in both of which types of transactions the purchaser pays an amount equal to the refinery price at Enid, Oklahoma, plus an amount designated as a "differential." This differential is an amount equal to the through railroad rate from Enid, Oklahoma, to destination, less the charges paid out by the purchaser for the short-haul transportation from the pipe line terminal to destination. The charges, however, are modified in some sales to meet the competitive prices made by other refineries.

The line is not used as a "gathering line" to bring crude oil to the refinery from the producing wells. The Cimarron Valley Pipe Line Company is employed for that purpose. It is what is known as a "products pipe line" used for the transportation of refined petroleum products. In the construction of the line, the right of way was secured

by purchase and not by condemnation proceedings. Some condemnation proceedings were instituted by the Cimarron Valley Pipe Line Company prior to the purchase of the line by the plaintiff, but subsequently were dismissed and the property purchased.

Plaintiff publishes no tariffs with the Interstate Commerce Commission, or any other regulatory body, and accepts no oil products for transportation for other parties, or the general public. It does not permit any person, firm, or corporation, other than itself, to use its pipe line, its facilities, or anything pertaining to them, as a means of transportation of petroleum or any other commodity.

The only question involved is whether plaintiff is a "pipe line company" within the terms of the Interstate Commerce Act.

In 1906 the Interstate Commerce Act was amended to read as follows:

> "SEC. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe line, * * * who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad * * * from one State or Territory of the United States, * * * to any other State * * *." 34 Stat. 584.

In 1920 the Act was further amended to read as follows:

> "(1) That the provisions of this Act shall apply to common carriers engaged in—
>
> * * * * * * *
>
> "(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, * * *.
>
> "(c) * * * from one State * * * to any other State * * *.
>
> * * * * * * *

"(3) The term 'common carrier' as used in this Act shall include all pipe line companies; * * * and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire. * * *" 41 Stat. 474. * * *

"19a. That the commission shall as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act." 37 Stat. 701. (49 U. S. C. A. § 1, 19A)

The construction of the Act was before the Court in Pipe Line Cases, 234 U. S. 548; 58 L. Ed. 1459, and Valvoline Oil Company v. United States, 308 U. S. 141; 84 L. Ed. 151.

In Pipe Line Cases the Court was considering interstate pipe lines already engaged in transportation at the time of the passage of the 1906 amendment. The matter under consideration was the constitutionality of the act as applied to such companies. It held that certain of the companies were common carriers in substance if not in form and fell within the coverage of the Act even though engaged in the business at the time of the amendment.

With reference to the Standard Oil Company of Louisiana which was incorporated after the passage of the amendment, the Court held the act applicable for this same reason or because it entered the business of interstate transportation of oil by pipe line after the passage of the 1906 amendment.

As to the Uncle Sam Oil Company, the Court held that, being engaged only in transporting its own oil for its own use, the transportation involving neither purchase nor sale, such transportation was not transportation in commerce. The Court also undoubtedly took into consideration the fact that the company, having entered the field as a purely private pipe line prior to the passage of the 1906 amendment and having vested rights, arbitrary classification of such line as a common carrier would be unconstitutional.

The Uncle Sam Oil Company case must be distinguished from the instant case upon the ground that plaintiff is transporting oil products *to market for sale to the public* and thus

is engaged in transportation in commerce within the meaning of the Act. The time of transfer of title, whether at Enid, Oklahoma, or at Hutchinson, Superior, Rock Rapids or at purchaser's place of business, is technical. In either instance the public pays the transportation charge. A charge or "differential" equal to rail rates is added in "spot-market" sales to the current price of the oil products at Enid, Oklahoma, on the date of the delivery. In "contract" sales the products are sold at contract price for an agreed period of time plus this same "differential."

In either "spot" or "contract" sales the effect on the public is the same as if title passed to the purchaser at the refinery. The purpose of the broad coverage of the Act was to make it impossible for pipe line carriers to escape its terms upon such technicalities.

In the Valvoline Oil Company case, the company asserted that the oil flowing through its lines was not in commerce until *after* preparation for market, thereby admitting that after such preparation the transportation would be in commerce. In the instant case, the products are refined products being transported to market and are, therefore, transported in commerce.

We think the foregoing conclusions are inescapable from consideration of the plain terms of the Act and the following quotation from the opinion in Pipe Line Cases:

> "*The only matter requiring much consideration is the constitutionality of the act.* That the transportation is commerce among the states we think clear. That conception cannot be made wholly dependent upon technical questions of title, and the fact that the oils transported belonged to the owner of the pipe line is not conclusive against the transportation being such commerce. The situation that we have described would make it illusory to deny the title of commerce to such transportation, beginning in purchase and ending in sale for the same reasons that make it transportation within the act. The control of Congress over commerce among the states cannot be made a means of exercising powers not intrusted to it by the Constitution, but it may require those who are common carriers in sub-

stance to become so in form. *So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid. So the objection is narrowed to the fact that it applies to lines already engaged in transportation.*" (Emphasis supplied.)

Plaintiff attempts to demontrate that it does not fall within the coverage of the Act by asserting that it is not in fact a common carrier. The Act makes it a *statutory* common carrier.

The fact, if true, that plaintiff is a private carrier is immaterial since it is covered by the Act and chose to enter the business of transportation of oil products after the enactment thereof.

In our opinion, the plain meaning of the Act as amended is that its provisions apply to *all engaged in the interstate transportation of oil or other commodities, except water and except natural or artificial gas, by pipe line.*

The Act states that its provisions shall apply to "common carriers engaged in * * * the transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line". It then defines the term "common carrier" to include "all pipe line companies * * * and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire".

In the Valvoline Oil Company case the Court, in referring to the last clause of the definition of "common carrier" said:

> "This clause is a conjunctive and not a modifier. It does not affect the generality of the first clause as to pipe-line companies."

The Court said in the Pipe Line Cases in construing the 1906 Amendment:

> "The provisions of the act are to apply to any person engaged in the transportation of oil by means of pipe lines."

Congress intended to include all pipe lines without regard to whether they were private lines or carried for the public.[1]

In the Valvoline Oil Company case the Court held that the provision in the 1920 amendment that the Act applied to "all pipe line companies" did not narrow the coverage of the Act. *We think this change in verbiage was made for the purpose of making it clear, if any doubt was created by the Uncle Sam Oil Company decision, that all future pipe lines engaged in the interstate transportation of oil or other commodities, except water and natural or artificial gas, were covered by its terms.*

The contention is made that plaintiff is not an interstate pipe line company; that it is a refining company. It is authorized by its charter, among other things, to transport petroleum. It produces and purchases oil, and through its wholly owned subsidiary, Cimarron Valley Pipe Line Company, transports it by pipe line from points in Oklahoma to its refinery at Enid, Oklahoma, and after refining, transports the products *from* its refinery through its own line to Kansas, Nebraska and Iowa for the purpose of sale. Plaintiff could just as logically take the position that it is a "producer" or "carrier".

Valvoline Oil Company was engaged in the refining business, had similar charter powers, and transported oil *to* its two refineries. The Court there stated:

> "There is no controversy over whether appellant is an interstate pipe line company. *Obviously it is.*" (Emphasis supplied.)

As in the Valvoline Oil Company case, plaintiff claims that to hold the Act applicable to it amounts to the taking of its property without due process of law. This contention

[1] An amendment was suggested in the Senate limiting the coverage to pipe lines "carrying for the public". Senator Lodge opposed this and in sponsoring the amendment as passed stated:

> "But the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come, under this rule, will, as the Senator from Minnesota (Mr. Nelson) says, absolutely destroy the value of my amendment." 40 Cong. Rec. 6361-65.

is answered by the Court in the Pipe Line Cases. Plaintiff is a "future" pipe line company.

Plaintiff's petition to enjoin and annul the order of the Interstate Commerce Commission should be dismissed. Defendant is requested to prepare and submit findings of fact, conclusions of law and judgment in accordance with the views herein expressed.

VAUGHT, District Judge, dissenting:

I regret the necessity of disagreeing with the majority opinion.

In the majority opinion, however, the facts are fairly and clearly stated, as well as the issue of law.

Were we considering the Act of Congress, (49 U.S.C.A. sec. 1(3)) for the first time, I might be constrained to agree with my associates in their conclusion. However, the Supreme Court has considered this very question in The Pipe Line Cases, 234 U. S. 548, and Valvoline Oil Company vs. United States et al., 308 U. S. 141.

The question at issue is whether or not, for the purposes of valuation, the pipe line of the plaintiff is a common carrier within the terms of Section 1, Chapter 1, of the Act. (49 USCA 1.)

The suit also involves the question of whether the required compliance with the Commission's valuation order would constitute a violation of the Constitution of the United States, by taking property of the plaintiff without just compensation, depriving it of its property without due process, or denying it equal protection of the law.

The pertinent sections of the statute are as follows:

49 U. S. C. A. sec. 1:

> "(1) The provisions of this chapter shall apply to common carriers engaged in—
>
> . . . . . .
>
> "(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water:

(c) * * * from one State * * * to any other State * * *.

* * * * * * *

"3) Definitions. The term 'common carrier' as used in this chapter shall include all pipe-line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire. * * *"

49 U. S. C. A. sec. 19a:

"(a) The commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this chapter.

* * * * * * *

"(e) Every common carrier subject to the provisions of this chapter shall furnish to the commission or its agents from time to time and as the commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, * * *."

This case involves the interpretation of the statute as it pertains to the facts presented, and the distinguishing features, if any, between the facts shown in The Pipe Line Cases, supra, and Valvoline Oil Company vs. United States et al., supra.

In The Pipe Line Cases, the court had under consideration the act as it was amended June 29, 1906, 34 Stat. 584, (known as the Hepburn Act), in which section 1(3), then read:

"That the provisions of this Act shall apply to any corporation or any person or persons engaged in the

transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, * * *."

In the body of the opinion at page 559, the court said:

"* * * The main question is whether the act does and constitutionally can apply to the several constituents that then had been united into a single line.

"Taking up first the construction of the statute, we think it plain that it was intended to reach the combination of pipe lines that we have described. The provisions of the act are to apply to any person engaged in the transportation of oil by means of pipe lines. The words 'who shall be considered and held to be common carriers within the meaning and purpose of this act' obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such. * * * Its evident purpose was to bring within its scope pipe lines that although not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price."

* * * * * * *

"* * * So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid. So the objection is narrowed to the fact that it applies to lines already engaged in transportation. But, as we already have intimated, those lines that we are considering are common carriers now in everything but form. They carry everybody's oil to a market, although they compel outsiders to sell it before taking it into their pipes. * * *"

In that case the Standard Oil Company controlled a number of pipe lines of other organizations, which, when taken together, formed a pipe line for transportation of oil across several states, and as stated by the court, at page 559:

> "* * * To meet the present amendment the Standard Oil Company took a conveyance of the New Jersey and Maryland lines, and the common carrier lines now end at insignificant places where there are neither market nor appliances except those of the Standard Oil, by which it would seem that the whole transport of the carriers' lines is received. * * *
>
> "Availing itself of its monopoly of the means of transportation the Standard Oil Company refused through its subordinates to carry any oil unless the same was sold to it or to them and through them to it on terms more or less dictated by itself. * * *"

There can be no question but that the oil thus transported, at the time of its transportation, was owned by the Standard Oil Company and that it was transporting its own oil through its own pipe line. The court then considered the Uncle Sam Oil Company and held that the facts as to that company did not fall within the description of the act as the transportation by that company was "merely an incident to use at the end," and said:

> "There remains to be considered only the Uncle Sam Oil Company. This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end. * * *"

The plaintiff contends it falls squarely within the holding as to the Uncle Sam Oil Company.

In Valvoline Oil Company v. United States, supra, Valvoline Oil Company owned a pipe line of 1,426 miles running to 9,020 wells in three states, into which it gathered some 75,000 barrels of oil per month for its two refineries in Pennsylvania which manufactured the products to be distributed to its trade. All of the oil was purchased from producers at the well, 50 per cent. originating in Pennsylvania, 38 per cent. in West Virginia, and 12 per cent. in Ohio. Surplus oil, not needed in its operations in its refineries, was sold to refineries in Pennsylvania and West Virginia; none of which came out of the state of the refinery. Because it did not transport interstate other oil than that which it purchased at the well for its own use, it claimed it was not a common carrier of oil subject to the Interstate Commerce Act, nor that it should be held to come within the terms of the statute. It contended that it was not a common carrier within the provisions of the act, that its pipe line was used primarily to transport oil to its own refineries, and that such transportation was not clothed with a public interest. The court, in passing upon the issues, said (p. 145):

> "In the present Act there is a change of language but we perceive none in meaning. Speaking of the amendments of the Transportation Act of 1920, which recast the Hepburn Amendment into the present form, the House Committee on Interstate and Foreign Commerce reported that the section here under consideration 'amends the first five paragraphs of section 1 of the Commerce Act, making minor corrections and classifying language in several respects, but making no important changes in policy.' As now written the section brings railroads under the Act by means of the last clause of subsection (3) only. This clause is a conjunctive, not a modifier. It does not affect the generality of the first clause as to pipe-line companies.
>
> "The appellant relies upon the Pipe Line Cases to show that the present act does not cover a pipe line transporting oil for its own refining purposes only.

> The discussion referred to is that concerning the Uncle Sam Oil Company. But that company's pipe line was used for the *'sole purpose of conducting oil from its own wells to its own refinery.'* This was held not to be transportation under the Act. Here, however, *it is the purchase from many sources* and subsequent carriage that determine the applicability of the statute to Valvoline.'' (Emphasis supplied.)

Under the holding in The Pipe Line Cases it was determined that not every "pipe line" that may be engaged in the transportation of oil is a common carrier, within the terms of the statute, even though it transports oil across state lines, and the Uncle Sam Oil Company's line was held to be an exception. In the Valvoline Case that distinction under the statute as amended was recognized and maintained, the court saying: "But that company's pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.'" While in The Pipe Line Cases the court said: "When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end."

Let us now consider the facts in The Pipe Line Cases and the Valvoline Case as distinguished from the facts shown in the instant case.

In The Pipe Line Cases the Standard Oil Company owned or controlled the pipe lines, which were engaged in transporting the oil from many owners. The court described the situation as follows, (234 U. S. 559):

> "Availing itself of its monopoly of the means of transportation the Standard Oil Company refused through its subordinates to carry any oil unless the same was sold to it or to them and through them to it on terms more or less dictated by itself. In this way it made itself master of the fields without the necessity of owning them and carried across half the

continent a great subject of international commerce coming from many owners but, by the duress of which the Standard Oil Company was master, carrying it all as its own. * * *"

* * * * * * *

"* * * It not only would be a sacrifice of fact to form but would empty the act if the carriage to the seaboard of nearly all the oil east of California, were held not to be transportation within its meaning, because by the exercise of their power the carriers imposed as a condition to the carriage a sale to themselves. * * * Its evident purpose was to bring within its scope pipe lines that although not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price."

In the instant case we have none of these distinguishing features. The Champlin Refining Company is not engaged in "carrying all oil offered" but is carrying only its own refined product. It is not monopolizing "the means of transportation" of oil. It is not refusing to carry oil unless it is sold to it on its terms or any other terms. It simply is not engaged in carrying any oil except its own product, refined at its own refinery, and transported for its own use to its own terminals.

In the Valvoline Case, the Valvoline Oil Company had two refineries in Pennsylvania. Its pipe lines embraced 1,426 miles which ran to 9,020 wells located in Pennsylvania, West Virginia, and Ohio. It gathered from these wells some 75,000 barrels of oil per month for the purpose of refining the produce to be distributed to its trade. It could not use all the oil so gathered in its refineries and sold the surplus to other refineries, located one in Pennsylvania and one in West Virginia. I think the court distinguishes the fact situation in the Valvoline Case from the case at bar when it said: "*Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline.*"

In the instant case the Champlin Refining Company is not gathering through its pipe line the product it transports. The product it transports originates at its own refinery at Enid, Oklahoma. As so originated, it is owned by the company in its entirety, the pipe line being "merely an incident to use at the end," which is the marketing of its product. And, as stated by the court in the Valvoline Case, supra, in distinguishing between the facts there shown and the facts shown in The Pipe Line Cases, as to the Uncle Sam Oil Company: "But that company's pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.' This was held not to be transportation under the Act."

Is the general public interested in such transportation as shown in the case at bar? The record does not disclose that anyone has sought to have oil transported through this pipe line. It does not disclose that the company transports any product but its own, nor that it holds itself out to the public as a carrier of the product of any who offer to avail themselves of its facilities, but on the contrary, it discloses that the line is constructed and maintained in such a manner that such facilities would not be available to any such transportation. It merely shows that the Champlin Refining Company refines its own product at its own refinery and transports it to market with its own facilities, for its own use, which use is to place it on the market. Certainly, the fact that the plaintiff added to the price of its products at its terminals what it considered to be a fair sum to cover the cost of transportation, would not and could not interest the buying public. It would have to compete with others at the market who were offering products of a like kind. The record discloses that its means of transportation had cost a large sum of money and that it had to maintain its transportation facilities, if it was an "incident to use at the end."

There is a distinct difference between a pipe line engaged in *interstate commerce* and a pipe line which is a *common carrier*. In the first instance the pipe line may or may not be a common carrier. The determining factors are the use to which the pipe line is put and the statute which defines "common carrier."

If a pipe line is not operated for hire, then the statute, as construed by The Pipe Line Cases and the Valvoline Case, would not apply.

For the foregoing reasons, therefore, I respectfully dissent to the majority opinion.

Endorsed: Filed March 21, 1945. Theodore M. Filson, Clerk.

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No. 1269. 75 21

In the Supreme Court of the United States

October Term, 1944.

CHAMPLIN REFINING COMPANY, A CORPORATION,
Appellant,
vs.
UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION, *Appellees.*

BRIEF OPPOSING MOTION TO AFFIRM.

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DAN MOODY,
Attorneys for Appellant.

INDEX.

	PAGE
Statement	1
Argument	6
Points of error	6
Statement	7
Argument in support of Points of Error II to VI, inc.	8
The holdings of the majority, that Section 1 of the Interstate Commerce Act applies to all engaged in interstate transportation of oil by pipe line, and that appellant is a "statutory" common carrier	9
The holding of the majority that since appellant is engaged in transporting oil products for the purpose of later marketing them, "it is engaged in transportation in commerce within the meaning of the Act."	18
The holding of the majority that appellant is a "'future' pipe line company."	24
Argument in support of Point of Error VII	28
The holding of the majority that the "differential" is a charge for transportation	28

AUTHORITIES CITED.

Brief for the Government and I. C. C., 234 U. S. 549	12, 16
Frost Trucking Co. v. Railroad Commission, 271 U. S. 583	26
Hepburn Amendment, as enacted in 1906	14
Interstate Commerce Commission v. Clayton, 127 F. (2d) 967	24, 29
Interstate Commerce Commission v. Tank Car Oil Corporation, (No. Dist. Ga.), not yet reported—Exhibit "E" to petition for rehearing, Orig. Rec., pp. 291-303	29
Pennsylvania Ry. Co. v. Public Utilities Commission, 298 U. S. 170	19, 22, 23, 24
Pipe Line Cases, 234 U. S. 548	6, 7, 10
Prairie Oil & Gas Co. v. United States, 204 Fed. 798, 804-806	11
Smith v. Cahoon, Sheriff, 283 U. S. 553, 562-563	26
Valvoline Oil Co. v. U. S., 308 U. S. 141	6, 7, 13, 16, 20

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Statement.

The appellant, in conformity with the provisions of subdivisions 3 and 4 of Rule 7 of this Court, submits this brief in opposition to appellees' motion to affirm.

The question involved is substantial and represents an invasion of a field of proposed regulation not heretofore assumed by the Interstate Commerce Commission.

The question presented, is whether a refiner of crude oil products may, without invoking the exercise of eminent domain, but solely by the purchase of privately obtained right of way, construct over and across state lines, a welded, seamless, steel products pipe line, as a plant facility for the moving of such refiner's refinery products *only*, out of refinery operational tanks, into storage tanks distantly located in other states, for future sale by such re-

finer from such storage tanks *only*, without thereby dedicating such pipe line to the use of its competitors, as a common carrier engaged in interstate transportation within the jurisdiction of the Interstate Commerce Commission?

The decision appealed from makes every interstate oil pipe line, regardless of the purpose for which it is used, a "common carrier" within the meaning of the Act.

The facts as found by the Commission and approved by the trial court, are not materially in dispute, save in respect to the finding (Rec., pp. 310-311) that the,

> "differential is adjusted so that the through charge to the final transportation destination of the product will equal the cost of product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination."

This finding is but partially supported in the record and in any event, whether correctly made or otherwise, is not controlling in the result. The appellant, by reference, adopts its jurisdictional statement (Orig. Rec., pp. 340-348W) as a part of this brief for the recitation of the detail therein set forth.

In support of its contention that the question is *substantial*, the appellant directs attention,

First, to the fact that the Interstate Commerce Commission, on the 17th day of March, 1941, recognized that its proposed regulation of private products pipe lines in use in marketing refiner products, by valuation thereof as common carriers, represented an assumption of power which it had never exercised or claimed prior thereto. It also concluded that it should have legal authority for so doing and as a result, there was published a memorandum, copy of which was introduced in evidence in the trial of this case as Exhibit 50 (Orig. Rec., p. 1061) which reads as follows:

"Ex. 50.

Valuation 1980.

"At a Session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 17th day of March, A. D. 1941.

Clyde B. Aitchison,
Walter M. W. Splawn,
J. Haden Alldredge,
Commissioners.

Recommendation made by Director Lewis in memorandum of Feb. 7, 1941, to Commissioner Miller, that the bureau of valuation proceed against either the Champlin Refining Company or the Standard Oil Company of Indiana in such manner as will bring before the Commission the question of jurisdiction under Section 19a for the purposes of a test case, approved, Commissioner Splawn voting in the negative."

Commissioner Splawn voted in the negative upon the declaration of intention indicated by such action, and this litigation has been continuously before the Commission and in the courts since that date.

This appellant, selected for a test case, is a New Mexico corporation, *entirely* owned by the family of the late H. H. Champlin, and has, as found by the Commission, but 3½% of the business in the area served by the pipe line (49 Val. Rep., p. 464).

Second, to the further fact that the first adverse report was published by the Commission on December 14, 1942 (49 Val. Rep. 463, Orig. Rec., pp. 1062-1069, inc.), upon which a reargument and reconsideration was granted on April 5, 1943 (Orig. Rec., p. 1070). Thereafter, a second report was published on June 12, 1944, 49 Val. Rep., p. 542 (Orig. Rec., pp. 1071-1079, inc.), Chairman Patterson and Commissioner Porter dissenting to the publication thereof.

Third, that the far-reaching decision of the 3-judge court was entered upon a majority opinion by Judges Murrah and Chandler, with Judge Vaught dissenting.

The opinions are attached to the jurisdictional statement submitted herewith and will be noticed in the argument, *infra.*

Fourth, that during the argument upon petition for rehearing, Judge Murrah (Circuit Judge) whose vote decided the lawsuit, made certain statements (Orig. Rec., pp. 504-506, inc.), which we quote:

> "(During the presentation and argument on the motion for rehearing in the foregoing cause, the following proceedings, among others, took place.)
>
> Mr. Moody: * * * Your Honors, whether you say as to present conduct or as to the future, it ultimately comes to the same point, the same end, it takes property, and it takes it without due process of law. It takes it without any sort of process of law.
>
> Murrah, J.: Let's go back. I certainly want to say so far as I am concerned that as far as the interpretation or construction of the statutory language is concerned, I have no difficulty in finding that Congress intended to make the Champlin Pipe Line Company a common carrier within the meaning of this statute. I agree with you that the Supreme Court has not gone that far. There isn't any question about it as far as I am concerned. They have refused to go that far. I will put it that way. I say they have refused to do so. I don't know. I can't tell from reading those decisions whether they thought Congress could not do it or Congress did not intend to do it, but I am perfectly willing for them to clear it up, but it does worry me, the question of whether or not we are giving an unconstitutional construction to that. We are not unmindful of the force of our decision. I am not, and I am sure my associates are not. I am pretty sure Judge Vaught isn't, and Judge Chandler and I discussed it in detail. If the In-

terstate Commerce Commission said to you, 'Mr. Moody, you cannot transport your merchandise from Texas to Oklahoma unless you offer to transport all other merchandise, the merchandise of your neighbors and competitor,' I agree with you. I don't think they could do that. That is the *Clayton* case. 'You just can't force me to engage in a business I am not disposed to engage in.' That is, not under due process. That is involuntary servitude as far as that is concerned. But say the Texas-Empire Pipe Line Company starts down here and goes to some place in Illinois, and transports all kinds of gasoline for hire, all of those matters become correlated to a public interest. That is the point I have in mind.

Mr. Moody: All right, your first point, that the Supreme Court has refused to go as far as this Court has gone.

Murrah, J.: I don't think they have gone that far."

It is obvious that the concession, that the Supreme Court has "not gone as far" in the *Pipe Line* and *Valvoline* cases, as Judge Murrah admitted he was going in this decision, completely negatives the appellees' contention that the "question here is not substantial."

The admitted refusal of a majority of a 3-judge specially constituted district court to follow the decisions of this Court, and especially landmark decisions, seems to counsel for appellant to present quite a *substantial* question within itself.

The motion to affirm is wholly without merit and upon the face of the record should be summarily denied.

ARGUMENT.

The appellant, in support of its objections to the appellees' motion to confirm, respectfully submits the following Points of Error and supporting argument. For avoidance in repeated identification in detail, the *Pipe Line Cases*, 234 U. S. 548, will be referred to as the *Pipe Line Cases;* the *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, will be referred to as the *Valvoline Case;* the *majority opinion* in the trial court as the *majority;* and this Court will be referred to as the *Supreme Court.*

Point of Error I.

The majority erred in denying appellant relief and in holding that its petition should be dismissed.

Point of Error II.

The majority erred in construing Section 1 of the Interstate Commerce Act to include in its term "all pipe lines without regard to whether they were (are) private lines, or carried (carry) for the public," and to "apply to all engaged in interstate transportation of oil * * * by pipe line."

Point of Error III.

The majority erred in holding that in the operation of its products pipe line, appellant is a "statutory common carrier" under the terms of Section 1 of the Interstate Commerce Act.

Point of Error IV.

The majority erred in holding that since appellant is engaged in transporting oil products for the purpose of

later marketing them, "it is engaged in transportation in commerce within the meaning of the Act."

POINT OF ERROR V.

The majority erred in holding that appellant, in the operation of its products pipe line, is a "'future' pipe line company."

POINT OF ERROR VI.

The majority erred in holding, on the basis of the holdings challenged in Points of Error II to V, that appellant's operation of its products pipe line is subject to the jurisdiction of the Interstate Commerce Commission under the terms of the Interstate Commerce Act.

POINT OF ERROR VII.

The majority erred in holding that the "differential" is a transportation charge.

Statement.

Points of Error II to VII, inclusive, challenge the subsidiary holdings upon which the majority made the ultimate holding, attacked by Point of Error I, that appellant should be denied relief and its petition dismissed. Points of Error II to VI, inclusive, relate to the majority's interpretation of the Interstate Commerce Act and its application to the facts of this case. The construction which the majority has given to the Act and the application which has been made of it to the facts of this case, appellant respectfully contends, amounts to a refusal to follow the holdings of the Supreme Court in the *Pipe Line Cases*, 234 U. S. 548, and in the *Valvoline Case*, 308 U. S. 141. Points of Error II to VI, inclusive, being related to and involving the same general subject, will be presented under one argument. If any of them

are sustained, the force of Point of Error I will have been demonstrated.

Argument in Support of Points of Error II to VI, Inclusive.

The holdings upon which the majority have concluded that appellant's pipe line operations are within the terms of the Interstate Commerce Act are, under the facts of the case, in direct conflict with the holdings of the Supreme Court in the *Pipe Line Cases* and in the *Valvoline Case*. This seems too clear for haggling or dispute. The truth of the statement is demonstrable, and will be demonstrated, by a comparison of the herein challenged holdings with the records and holdings in the *Pipe Line Cases* and the *Valvoline Case*.

The construction which the Supreme Court placed on the pipe line clause of the Interstate Commerce Act in the *Pipe Line Cases* and in the *Valvoline Case*, together with the holding in the *Valvoline Case* that the change in language in the Act of 1920 did not change the meaning of the law as enacted in 1906, were binding on the trial court because of the final authority of the Supreme Court and on the principle of *stare decisis*. To say that the majority opinion in this case overrules the Supreme Court would be to state a legal impossibility, but to say that the majority has failed in this case to follow the Supreme Court would be to state an obvious fact. The majority opinion ascribes to the Act of 1920 a purpose wholly inconsistent with the holding of the Supreme Court in the *Valvoline Case, viz.*, that it did not change the meaning of the former Act. By no process of r a t i o n a l reasoning can any other conclusion be reached.

It will be shown that the Supreme Court has twice been pressed by the Government and the Interstate Commerce Commission to construe the pipe line clause of the Inter-

state Commerce Act as including all engaged in interstate transportation of oil by pipe line, as the majority has construed it in this case, and that the Supreme Court has twice refused to so construe it.

The holdings of the majority, that Section 1 of the Interstate Commerce Act applies to all engaged in interstate transportation of oil by pipe line, and that appellant is a "statutory" common carrier.

In the *Pipe Line Cases*, the Hepburn Amendment (Act of 1906) was construed to apply only to those pipe lines engaged in transporting oil in interstate commerce as carriers of oil for others—common carriers. The Supreme Court refused to distinguish between those which were common carriers in substance and form, and those which were common carriers in substance but not in outward form. Those which carried "everybody's" oil—nearly all of the oil east of California—were held to be common carriers in substance and in fact, if not in form. The pipe line which was used only to carry the oil of its owner to the refinery to be *refined* and the *products marketed*, the Uncle Sam Oil Company pipe line, was held not to be a common carrier pipe line in either fact, form or substance, and the operation of that line, therefore, was held not to be included in the Act.

Where a monopoly of the means of transportation was used to force producers of the oil to sell their oil to the pipe line owner before it would be taken into the pipe line, the Supreme Court refused to allow the fact of the transfer of title to obscure the very obvious fact that the pipe line was in truth serving the public as the only practical means of transporting oil. There, as in the *Valvoline Case*, it was the purchase from many and subsequent transportation that determined the applicability of the Act to such pipe line operators.

The opinion in the *Pipe Line Cases* must be looked to for its substance and overall effect in construing the statute; and, when so examined, it is apparent that the statute was there construed to reach only those pipe lines which transport for others, or furnish a means of transportation for the products of others, and as not reaching those pipe lines which were used to transport only the oil of the owner of the pipe line.

One sentence from Mr. Justice Holmes' opinion is quoted in the majority opinion, as follows:

> "The provisions of the Act are to apply to any person engaged in the transportation of oil by means of pipe lines."

The majority opinion then adds:

> "Congress intended to include all pipe lines without regard to whether they were private lines or carried for the public."

It is a dangerous business, thus, to attempt to dissect Mr. Justice Holmes' opinion into individual sentences that make up the whole, if one wishes to reach his true meaning. He used that one sentence, but that is not what he held. It might as well be argued that by that sentence he meant that the Act applied to *intrastate* movement of oil by pipe line because he did not in the sentence limit his statement to interstate movements, as to give the sentence the meaning given to it in the majority opinion in this case. When the Supreme Court held that the Uncle Sam Oil Company was not under the Act, it construed the provisions of that Act to *not* apply to "all engaged in interstate transportation of oil by pipe line." That is a Supreme Court holding which the majority of the trial court has failed to follow, and upon the basis of one sentence has attempted to ground a holding contrary to the holding of the opinion from which that sentence is taken.

The holding of the majority in this case that all pipe lines engaged in moving oil from one state to another, whether or not the operations are private or for the public, are by the terms of the Act made common carriers, and the holding of the Supreme Court in the *Pipe Line Cases* that not all such pipe lines are under the Act, cannot stand at one and the same time, if the Act of 1920 did not change the meaning of the Act of 1906 as contended by the Government and held by the Supreme Court in the *Valvoline Case*. One holding must yield to the other; one must fall, and the other stand.

The Act of 1906 had never been construed by any court to reach all pipe lines engaged in moving oil from one state to another, except the Commerce Court (*Prairie Oil & Gas Co.* v. *United States*, 204 Fed. 798, 804-806), until the majority opinion was published in this case. The Commerce Court's construction was overruled by the Supreme Court when that case reached the Supreme Court in the *Pipe Line Cases*, and the Supreme Court held that the operations of the Uncle Sam Oil Company were not within reach of the Act. The Uncle Sam Oil Company was using its pipe line to move from one state to another only its own oil. The Commerce Court held it and all other companies involved in the case were under the Act. The Supreme Court held that the operations of the Uncle Sam Oil Company were not within the reach of the Act. This holding was not based upon a ruling on any constitutional question, but on the terms of the statute and the private nature of the Uncle Sam Oil Company's operations.

In the *Pipe Line Cases* the Government and the Interstate Commerce Commission had pressed upon the Supreme Court the theory that: "Congress intended the Act to apply to every interstate oil-carrying pipe line, and to compel every such interstate pipe line to become a common carrier as a condition precedent to engaging in interstate

commerce." (See summary of brief for the Government and Interstate Commerce Commission, 234 U. S. 549). The Supreme Court refused to adopt the construction contended for by the Government and Interstate Commerce Commission when the Supreme Court held that the Act did not apply to the operations of the Uncle Sam Oil Company; but the majority in this case has held that the Act of 1920, amending the Act of 1906, without change of meaning, does apply to all engaged in interstate transportation of oil by pipe line.

If the Supreme Court's construction of the Act is to stand, then, appellant being in this case in the same fact situation from a legal standpoint, as the Uncle Sam Oil Company was in the *Pipe Line Cases*, the holding of the majority of the trial court that appellant's petition should be dismissed, is clearly error, unless the Act of 1920 has a meaning different from the Act of 1906, which was before the Supreme Court in the *Pipe Line Cases*.

The Act of 1920 had never been construed by any court to reach all pipe lines "without regard to whether they were (are) private lines or carried (carry) for the public," or to apply "to all engaged in interstate transportation of oil * * * by pipe line," until the majority opinion in this case gave it such far-reaching effect. The Act of 1920 has been before the Supreme Court in only the *Valvoline Case*, and in that case the Supreme Court failed to give it such a construction although the Government advanced the theory, as will be shown herein, that the Act of 1920 applied to all engaged in interstate transportation of oil by pipe line.

Four features of the opinion in the *Valvoline Case* are of especial interest in this case. They are: *first*, that the change in wording between the Act of 1920 and the Act of 1906 did not effect a change in the meaning of the law; *second*, the approval of the holding in the *Pipe Line Cases* that the operations of Uncle Sam Oil Company were not

within the Act; *third*, the basis of the holding that *Valvoline's* operations were within the reach of the Act; and, *fourth*, the fact that the Supreme Court failed to hold that Valvoline was a "future" pipe line (as the majority of the trial court has held appellant to be a "future" pipe line), and on that basis hold that Valvoline was under the Act.

The Act of 1920 provides that it shall "apply to common carriers engaged in * * * the transportation of oil * * * by pipe line, and that the term 'common carrier' includes 'all pipe line companies'. * * * and all persons, natural and artificial, engaged in such transportation * * * as aforesaid as common carriers for hire." What does this language mean? The Government contended in the *Valvoline Case* that the language did not change the meaning of the Hepburn Act as it was enacted in 1906, stating at page 13 of the Government's brief in the *Valvoline Case*, (see Exhibit "F" to petition for rehearing, original record, pp. 146-166) that,

> "* * * While the applicable sections of the Act have been amended in minor detail since that decision [the decision in the *Pipe Line Cases*], the amendment simply clarifies the language of the statute and does not make any important change in policy."

See, page 21 also of same brief.

In the *Valvoline Case*, the Supreme Court said that the difference in wording between the Act of 1906 and the Act of 1920 did not effect a change in meaning. On this point it was said: "In the present Act there is a change of language but we perceive none in meaning," and quoted from the report of the Committee of Congress stating that the Act "amends * * * the Commerce Act, making minor corrections and classifying language in several respects, but making no important changes in policy."

Mr. Justice Reed and the Government were then in accord on the point that the meaning of the Act of 1906 and

the Act of 1920 are the same, for he said that the change in language between the Act of 1906 and the Amendment of 1920, did not effect a change in meaning; and, moreover, to fortify his holding, he quoted the Congressional Committee's statement that the Amendment of 1920 was not intended to change the policy declared in the earlier statute.

The Hepburn Amendment, as enacted in 1906, provided that,

> "The provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil * * * by means of pipe lines * * * who shall be considered and held to be common carriers within the meaning and purpose of this Act * * *."

Mr. Justice Holmes held in the *Pipe Line Cases* that the last quoted language reached those that were common carriers in form and substance, and those that were common carriers in substance, though not in form; but, in effect, held that a pipe line used only to carry the pipe line owner's oil was not within the reach of the Act.

Mr. Justice Reed in the *Valvoline Case* approved this holding, stating that the Uncle Sam Oil Company's pipe line was used for the "'sole purpose of conducting oil from its own oil wells to its own refinery'," and added that, as to the Valvoline's operations, "it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline."

The fact that a means was provided to others of transporting their products—transportation for others—was the basis upon which all pipe lines involved in the *Pipe Line Cases*, except the Uncle Sam Oil Company's line, and the lines later involved in the *Valvoline Case*, were held to be within the terms of the pipe line clause of the Interstate Commerce Act. Use of a monopoly of the only available, practical means of transportation to force a sale of the oil to the pipe line owners, as a condition upon which it would

be transported, was not allowed to conceal the fact that the transportation was, in reality and in truth, for others. At the same time it was recognized in both the *Pipe Line Cases* and the *Valvoline Case* that transportation of oil belonging only to the owner of the pipe line was not within the Act.

In the *Valvoline Case* the Supreme Court did not hold that the Act of 1920 applied to "all engaged in interstate transportation of oil * * * by pipe line," or included "all pipe lines without regard to whether they were (are) private lines or carried (carry) for the public," as the majority has held in this case. On the contrary, the Supreme Court, having held that the Act of 1920 did not change the meaning of the Hepburn Amendment or the policy declared therein, approved the holding in the *Pipe Line Cases* in respect to the operations of Uncle Sam Oil Company and said that "it is the purchase from many sources and the subsequent carriage that determine the applicability of the statute to Valvoline." Thus the Supreme Court refused to construe the Act of 1920 as the trial court has construed it, and held that Valvoline was under the Act for the very same reasons that the Supreme Court held in the *Pipe Line Cases* that the Standard Company was under the Act. The same facts that formed the basis for holding in the *Pipe Line Cases* that the operations of the Standard Company were within the terms of the Act of 1906 also formed the basis for holding in the *Valvoline Case* that the operations of Valvoline were within the terms of the Act of 1920. The same rule was applied in both cases under Acts of equal meaning. This application of the same rule in both cases, together with the approval in the *Valvoline Case* of the holding as to the operations of the Uncle Sam Oil Company and the statement that the change in language between the two Acts did not effect a change in meaning, makes clear that the Su-

preme Court has declined to give the Act of 1920 the construction which the majority has given to it in this case.

It is stated above that the Supreme Court has twice refused to give the pipe line clause of the Interstate Commerce Act the construction which the majority has given it in this case. The facts justify the statement.

In the *Valvoline Case* the theory was advanced, as it had been as to the Act of 1906 in the *Pipe Line Cases* and as it has been as to the Act of 1920 in this case, that the Act of 1920 brought within its reach all persons engaged in the interstate transportation of oil by pipe line, for it was stated at page 13 of the brief for the Government and the Interstate Commerce Commission identified, *supra*, in that case that,

> "* * * Since Valvoline is a pipe line company, engaged in the interstate transportation of oil, it comes directly within the statutory definition."

In other words, said the Government and the Commission in that case, any person engaged in interstate transportation of oil by pipe line is within the terms of the Act.

Again, at page 21 of the same brief for the Government and the Interstate Commerce Commission in the *Valvoline Case*, the following statement was made:

> "The fact that Valvoline is a pipe-line company is determinative of the fact that it is a common carrier within the meaning of the Act; Section 1(3) expressly directs that the term 'common carrier * * * shall include all pipe-line companies'."

The theory of the Government thus advanced that the Act of 1920 included within its terms all engaged in interstate transportation of oil by pipe line was not accepted by the Supreme Court, as is apparent from the opinion in the *Valvoline Case*. Therefore, the statement that the Supreme Court there refused to construe the statute as the majority

has construed it in this case is justified. Acceptance of that theory and the construction of the Act as there proposed would have provided an easy way out in the *Valvoline Case*. The Supreme Court did not adopt that means of disposing of the case, but held that Valvoline was brought under the Act by reason of "the purchase from many sources and subsequent carriage," and so applied to Valvoline the rule upon which the Standard Company's operations had been held subject to the Act in the *Pipe Line Cases*. Valvoline was not held subject to the Act solely by reason of the fact that it was engaged in interstate transportation of oil by pipe line.

Let it be remembered, as shown above, that in the *Pipe Line Cases* the Government and Interstate Commerce Commission contended that the Act of 1906 should be construed to bring within its terms all engaged in the interstate transportation of oil by pipe line. In that case such a construction would also have been an easy way out, but the Supreme Court refused to adopt it.

Thus it is shown that the Supreme Court has twice been pressed, and has twice refused, to construe the pipe line clause of the Interstate Commerce Act as the majority has construed it in this case.

At one point in the majority opinion the thought is advanced that a "change in verbiage was made for the purpose of making clear, if any doubt was created by the *Uncle Sam Oil Company* decision, that all future pipe lines engaged in the interstate transportation of oil * * * were covered by its terms." This statement cannot be reconciled with Mr. Justice Reed's holding in the *Valvoline Case* that, "in the present Act there is a change of language but we perceive none in meaning," or with his failure to base his holding on any such ground; but that statement of the majority opinion will be discussed under another heading.

The majority's holding that the Act applies to all persons engaged in interstate transportation of oil by pipe line must necessarily yield to the holdings of the Supreme Court in the *Pipe Line Cases* and the *Valvoline Case*, and with it must also fall the majority's holding that appellant is a "statutory common carrier."

The holding of the majority that since appellant is engaged in transporting oil products for the purpose of later marketing them, "it is engaged in transportation in commerce within the meaning of the Act."

The majority would have great difficulty in pointing to any language in the Interstate Commerce Act suggestive of a legislative intent to provide that a privately constructed, owned and operated pipe line, used only for the purpose of transporting the pipe line owner's petroleum products from its refinery in one state to markets in another state, shall, because such products are being transported to market, be classed as a common carrier under the Act and subjected to the duties and obligations imposed upon common carriers by the Act. There is an utter absence of any language which would suggest that Congress intended the purpose of the transportation to be the factor for determining what is public transportation reached and regulated by the Act and what is private transportation beyond the reach of the Act.

The fact that appellant's products are moved by pipe line to storage near market centers, is not controlling to distinguish appellant's fact situation from the fact situation occupied by the Uncle Sam Oil Company in the *Pipe Line Cases*, or to make such transportation of appellant's products interstate transportation in commerce within the reach of the Act. The Uncle Sam Oil Company was moving its oil to a refinery to be refined and the products sold. This statement of the purpose involved in the Uncle Sam Oil

Company operations is based on Chief Justice White's statement (234 U. S. 562), speaking of the Uncle Sam Oil Company's operation, that, "the product of course when reduced at the refinery passes into the markets of consumption." The pipe line movement there was, as here, a necessary operation between production and marketing to the consumer. The Standard Company operations involved in the *Pipe Line Cases* were movements of oil to market. But, it was not the fact that the movement of the oil was to market that determined that the Standard Company operations were subject to regulation under the Act any more than the fact that the Uncle Sam Oil Company was moving its oil for a like purpose determined that the Uncle Sam Company's operations were not subject to regulations under the Act. It was the fact of purchase by the Standard Company from many, and in effect the transporting of oil for others, that determined the applicability of the Act to the Standard Company. The fact that the Uncle Sam Oil Company transported only its own oil, determined that its operations were not under the Act. The fact that the Uncle Sam Oil Company operations involved in the *Pipe Line Cases* were a step toward the marketing of the products refined from the oil was not allowed to obscure the fact that the transportation was private, and, therefore, not within the terms of the Act. Here it can be said, to paraphrase Mr. Justice Cardozo's language in *Pennsylvania Ry. Co.* v. *Public Utilities Commission*, 298 U. S. 170, *infra*, not all commerce is transportation, and not all interstate transportation is commerce within the meaning of the Interstate Commerce Act.

Certainly, there is not such a difference between the movement of oil from field to refinery by means of private pipe line, as a step toward marketing the products, and the movement of products from the refinery to storage near market centers by means of private pipe line, as to justify the assumption that Congress did not intend to include the

first movement within the terms of the Interstate Commerce Act, but did intend to include the second movement.

Again, in the *Valvoline Case*, the oil was moved by pipe line from the wells to refinery for the purpose of being refined and products sold in the markets, but it was not the fact that the oil was en route to market that determined the applicability of the Act of 1920 to Valvoline's operations. The Supreme Court said, "It is the purchase from many sources and subsequent carriage that determines the applicability of the statute to Valvoline."

In the *Valvoline Case*, Mr. Justice Reed, after referring to the practice of forcing the owners to sell their oil before it would be taken into the pipe lines, said:

> "* * * *Whether the oil so owned and transported was ultimately used by the carrier in its own operations or sold to others, was in this connection immaterial.* Certainly one would find a public interest in the sole means of transporting this commodity from thousands of wells *for thousands of producers.*" (Emphasis supplied.)

Mr. Justice Reed there said, in effect, that in the *Pipe Line Cases* whether the oil was being transported for use by the carrier or *for sale to others was immaterial;* that it was the means of transportation "from thousands of wells for thousands of producers" which constituted the controlling fact. Then in his opinion in the *Valvoline Case*, he said that it was "the purchase from many sources and subsequent carriage that determined the applicability of the statute to Valvoline."

In neither case was the holding based on the fact that the oil was being moved to market. In each case the holding was based on the fact that a means of transportation was furnished to others than the pipe line owner. The fact that the transportation was a step in bringing the oil to

market, was not a factor in determining the applicability of the Act, while in this case the majority has held that the same transportation is determinative of the applicability of the Act to appellant.

The Act was not construed to "apply to all engaged in the interstate transportation of oil * * * by means of pipe line" as a basis of bringing the Standard Company and Valvoline under its terms. The fact that the oil was being moved to market was not in either case made a determining factor. So the Supreme Court had the opportunity, in the *Valvoline Case* and in the *Pipe Line Cases*, to make each of these holdings but did not make either of them. Logically, the Supreme Court could not, in the *Valvoline Case*, have made either of these holdings, for they would have been in conflict with, *(1)* the holding that the change in wording between the Act of 1906 and the Act of 1920 did not effect a change in meaning, and *(2)* the approval of the exception of the Uncle Sam Oil Company's operations.

The Act of 1920, like the Act of 1906, was directed at transportation for others, and not at private transportation or transportation to market as such.

In the first paragraph on page 7 of the majority opinion (original record, p. 136), the following statement is made:

> "In the *Valvoline Oil Company* case the Court held that the provision in the 1920 amendment that the Act applied to 'all pipe line companies' did not narrow the coverage of the Act. *We think this change in verbiage was made for the purpose of making it clear, if any doubt was created by the Uncle Sam Oil Company decision, that all future pipe lines engaged in the interstate transportation of oil or other commodities, except water and natural or artificial gas, were covered by its terms.*"

The first sentence is an erroneous statement, uninten-

tional of course, of the holding of the Supreme Court in the *Valvoline Case.* There, Mr. Justice Reed had reference to the language, "engaged * * * as common carriers for hire," and not to the clause, "all pipe line companies."

The second sentence of the above quoted paragraph from the majority opinion is also erroneous in the purpose which it ascribes to the Act of 1920, for it is in direct conflict with the holding in the *Valvoline Case* that the change in language between the Act of 1906 and the Act of 1920 did not change the meaning of the law.

In *Pennsylvania Ry. Co.* v. *Public Utilities Commission,* 298 U. S. 170, Mr. Justice Cardozo clearly defined the class of carriers that are brought within the reach of the Interstate Commerce Act, and there he also had opportunity to hold, if it had been the law, that transportation for market is a controlling factor in determining whether transportation between states by privately owned, used and operated means is within the reach of the Interstate Commerce Act.

In that case he said:

> "* * * The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a federal commission. *The Interstate Commerce Act* (49 U. S. C., Sec. 1, et seq.) *is aimed at common carriers exclusively,* Sec. 1 (1) (3), *and not even at all these.*" (Emphasis supplied.)

In that case, the Supreme Court was passing upon whether or not transportation of coal from mines in Pennsylvania to a cleaning and sizing plant in Ohio by the producer of the coal by means of its own barges and railroad lines, used only for that purpose, could be tied on to transportation of the coal by common carrier, after cleaning and sizing, to markets in the latter state, and the entire movement treated as interstate transportation within the terms

of the Interstate Commerce Act. The fact analogy between that case and this case is at once apparent. This case involves the use of private means to transport oil from one state to storage near market centers in other states; that case involved the use of private means to transport coal from one state to a cleaning and sizing plant in another state, and later transportation of the coal by common carrier to markets in the latter state.

In that case Mr. Justice Cardozo said:

> "* * * The only transportation of this coal by a common carrier of merchandise either by railroad or by water was intrastate transportation in Ohio between Negley and Youngstown. The transportation between Pennsylvania and Ohio was by the owner, who was not a common carrier, but furnished implements of carriage for its own use exclusively. Appellants would have us hold that this interstate transportation by an owner who does not carry for anyone else will be tacked to the intrastate transportation by railroads who are in business as common carriers, and the movement thus consolidated brought within the statute. The statute and the decisions as we read them forbid this unifying process."

If the Act does not cover the movement of coal from one state to another (from mines to markets) by means owned and operated by the owners of the coal, and used exclusively for that purpose, it seems apparent that movement of oil products from one state to another (from refinery to storage and market) by means owned and operated by the owner of the oil products, and used exclusively for that purpose, is not covered by the Act. The fact that the transportation of the coal was a step in moving the coal to market, was not treated as of any significance.

An illustration used by Mr. Justice Cardozo in the *Pennsylvania Railroad Case* emphasizes the point that, the fact that the movement of products by private means from

one state to another is for the purpose of reaching markets, does not determine that the movement is within the terms of the Interstate Commerce Act. His illustration was:

> "* * * The situation laid before us would not be changed in its essentials if a cooperative association of farmers doing business in Pennsylvania close to the state line were to use a fleet of trucks belonging to the association or its members to carry milk or vegetables from Pennsylvania to a railroad station in Ohio. Even though this were done systematically and not casually or in sporadic instances, the ensuing transportation by rail, if kept within Ohio, would not be transportation between the states within the meaning of the Act of Congress. If the concept of transportation is in need of expansion, it is for the legislative department of the government to determine how great the change shall be."

FINALLY, the Circuit Court for this (10th) Circuit, Judge Murrah sitting, in *Interstate Commerce Commission* v. *Clayton*, 127 F. (2d) 967, was presented with a state of facts showing that Clayton purchased coal in one state, transported it by his privately owned truck over the public highways and marketed it in an adjoining state. The purpose of the transportation was to get the coal to a place where Clayton might market it. The question in the case was whether or not Clayton's operations were those of a common carrier subject to the terms of the Motor Carrier Act. In that case the court failed to find in the fact that the transportation was for the purpose of marketing the commodity transported, a basis for holding that the transportation was affected with a public interest and, therefore, by a common carrier under the Act.

The holding of the majority that appellant is a "'future' pipe line company."

The majority speak of appellant as a "'future' pipe line company," presumably meaning that it is a "'future'

pipe line company" in the sense that its pipe line was built and put in operation subsequent to the enactment of the Hepburn Amendment and the amendment thereto of 1920.

The statement raises two questions: *first*, what did Mr. Justice Holmes mean by the term "future pipe lines," as used in his opinion in the *Pipe Line Cases*?; and *second*, to what extent may Congress, under the Commerce Clause, impose upon such a *pipe line*, built and operated solely for the use of its owner in the movement of oil from one state to another, such duties, burdens and regulations as are imposed upon interstate common carriers by the Interstate Commerce Act?

Again, the opinion in the *Valvoline Case* furnishes a complete answer to the theory that the reference in Mr. Justice Holmes' opinion to "future pipe lines" should be treated as construing the pipe line clause of the Interstate Commerce Act as designed to make a public utility out of every interstate pipe line constructed subsequent to the Act of 1906. Valvoline extended its intrastate pipe line into West Virginia in 1913, and into Ohio in 1926—after the enactment of the Act of 1906. (Valvoline's Brief, page 4—Exhibit "G" to petition for rehearing, Orig. Rec., pp. 146-166, inc.) Valvoline's interstate pipe line was, therefore, a "future pipe line," as that term is applied in the majority opinion in this case.

If the Supreme Court, in the *Valvoline Case*, had interpreted the term "future pipe line" as the majority interpret it in this case, the Supreme Court would have readily disposed of the *Valvoline Case* by treating it as a "future pipe line," thereby eliminating any future reasoning. It did not do so.

The Supreme Court, having said that both Acts had the same meaning, recognized that the *Valvoline Case* had to be disposed of on the basis of the original rule of the

Pipe Line Cases, and not on the basis that Valvoline's line was a "future pipe line." It did dispose of Valvoline's contention on the rule applied in the *Pipe Line Cases*.

In considering the reference by Mr. Justice Holmes to future pipe lines, we are given the choice of treating it either as *dictum* or as applicable to the issue in the case. It requires no citation of authority to establish the principle that statements in a court's opinion should apply to the precise issue involved, rather than to matters not before the court, if such application can be reasonably made; and it is not only reasonable, but logical as well, to say that Mr. Justice Holmes' reference to "future pipe lines" meant pipe lines of the same nature as those involved in the case before him, that is, common "carriers in substance, if not in form."

The second question does not present difficulty when its ultimate meaning, as applied to the facts of this case, is stated. As applied to this case, the question means, May the Congress by legislative fiat (the Interstate Commerce Act) subject to public use a pipe line thereafter built for the exclusive use of the owner in moving his property from one state to another, where the pipe line is built without government aid or resort to any power of sovereignty such as that of eminent domain?

The question embodies the facts surrounding the building and operation of the appellant's pipe line, and states the issue raised by the holding in the majority opinion that appellant is a "future" pipe line company.

If the owner of private property has not by his voluntary act devoted it to the use of the public, Congress does not have the power to require him to devote it to such use. The authorities supporting this statement are numerous and well known, and it is not necessary to cite them at length. (*Frost Trucking Co.* v. *Railroad Commission*, 271 U. S. 583; *Smith* v. *Cahoon, Sheriff*, 283 U. S. 553, 562-563.)

An owner may devote his property to a public use by voluntarily offering its services to the public. Again, an owner of private property, by the acceptance of government aid or resort to the exercise of a power of sovereignty, such as the power of eminent domain, may subject his property to use by the public, particularly so where the aid is accepted or the power of eminent domain is exercised, upon the condition that the property shall be made available for public use. In each instance, it is the voluntary act of the owner, and it is only his voluntary act, that subjects his property to public use. It cannot be done under the Constitution by legislative fiat. Where the owner has so voluntarily devoted his property to a public use the operations of the property may be regulated by law. The Government may take private property for public use, but when that power is exercised, the owner must be paid for his property. The property may not be taken for public use without compensation.

It would not be asserted by any that Congress could require a ranchman, who builds a private telephone line from his ranch in one state, to his home in another state, to allow the use of his telephone line to all persons living between the ranch and the town; or that the farmers referred to in Mr. Justice Cardozo's illustration, *supra*, could be forced to make their trucks available to the general public. The reason that the trucks or telephone line could not by law be made available to the general public, is because such a requirement would be the taking of private property for a public use and subjecting the property of the owner to uses to which he had not devoted it.

In logic, there is no distinction between a person building his privately-owned pipe line from his well or refinery in one state, to his storage tanks in another state, to be used exclusively for transporting his own property, and a farmer using his truck to haul his products from farm to

market. Each is a private property, devoted to a private use and withheld from the public use. The fact that the public may have need for a product does not give the public a right to use the private means of transportation employed to get the product to market. If that were not true, all private property engaged in producing, manufacturing or in transporting products and commodities needed by the public, would be charged with a public interest, subject to use by the public at prices regulated by law.

It seems to be conceded by the majority opinion in this case that Congress cannot impose upon a pre-existing private carrier engaged in transporting property from one state to another, the burdens of a common carrier, and that if the Interstate Commerce Act were so construed, it would be unconstitutional. It is, however, inferable from the opinion that Congress may impose upon one who in the future may engage in the private transportation of his own property from one state to another, the duty to make available to the public his means of transportation. An attempt upon the part of Congress to exercise such power, would be just as obnoxious to the Fifth Amendment as an attempt by Congress to subject a pre-existing private property to a public use. Each would amount to the taking of private property without due process of law.

Argument in Support of Point of Error VII.

The holding of the majority that the "differential" is a charge for transportation.

The majority find that the differential is an amount "adjusted so that the through charge to the final transportation destination of the product will equal the cost of product at the refinery plus the through transportation cost from the refinery by rail or other means to final destination." (Orig. Rec., pp. 310-311.) This is incorrect. In all cases, the competitive price at purchaser's place of business deter-

mines the amount of the differential and in some instances it is the rail rate to the destination, less the cost to the purchaser of transportation from terminal to destination. When it is the latter, that is because the competitive price makes it so.

The fact that applying the differential to the price of the products f. o. b. the refinery at Enid, may result in a price at destination that yields a profit over and above the cost to appellant of producing the products, plus the cost of moving them by pipe line, does not, as a matter of law, convert the differential into a transportation charge to the purchaser as the majority has held. (*Interstate Commerce Commission* v. *Clayton*, (10th Circuit) 127 F. (2d) 967; *Interstate Commerce Commission* v. *Tank Car Oil Corp.* (Northern Dist., Ga.), ... Fed. ...., not yet reported—Exhibit "E" to petition for rehearing, Orig. Rec., pp. 291-303.)

The holding of the majority that the differential is a charge for transportation, denies to appellant its clear legal right to adopt any formula it may choose or find convenient to price its products to meet the price at which its competitors in the marketing area are selling like products. The holding further disregards the true purpose of the differential, as shown by the evidence, and arbitrarily ascribes to it a purpose to make a transportation charge.

If competitive conditions make it possible to sell the products at the storage tanks at the pipe line terminal above cost to appellant, the profit must be looked upon as the result of a business venture, just as the losses would be if competitive conditions forced a sale at below cost to appellant. If profits result from the sale, the formula by which appellant grades up its Enid price to equal the competitive price at the place of sale, is unimportant. The profit, if one accrues, cannot be treated as a charge for transportation any more than it can be treated as a charge for refining.

The "differential" is a device or formula for grading up the Enid price of the products to equal the competitive price at place of sale. The profits, if any accrue, are the results of a business venture, and cannot be said, as a matter of law, to be a charge to the purchaser for transportation.

For the reasons shown, it is submitted that the motion to affirm should be summarily denied.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 75 21

CHAMPLIN REFINING COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF FOR CHAMPLIN REFINING COMPANY

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INDEX.

Subject Index

	Page
Opinions Below	1
Jurisdiction	2
Statement of the Case	2
The Questions Involved and Their Importance	5
Specification of Assigned Errors	6
Statutes Involved	7
Argument	9
I. The error of the District Court in holding that Appellant is engaged in interstate transportation by pipe line within the meaning of the Interstate Commerce Act and is, therefore, subject to the regulatory authority and control of the Interstate Commerce Commission	9
(a) The original Act to regulate commerce	9
(b) The Hepburn Amendment of 1906	10
(c) The Amendment of 1920 to the Interstate Commerce Act	13
(1) The Pipe Line Cases	14
(2) The Valvoline Case	16
(3) The Pennsylvania Railroad case	18
(4) The Pittsburgh, Lisbon & Western Railroad Company case	20
(5) The Campbell River Mills Company case	21
(d) The fact that Appellant uses its pipe line to move its products to market does not bring such operations within the Act	22
II. The error of the District Court in holding that Appellant in the operation of its pipe line is a common carrier within the meaning of the Interstate Commerce Act	25
(a) This Court has refused to give the Act the breadth of meaning given to it by the trial court	26
(b) The Act deals only with such as are "common carriers" in fact, and does not purport by the use of the term "all pipe line companies", to create "common carriers" by legislative fiat	30
III. The error of the District Court in holding that the Interstate Commerce Act, construed to reach Appellant's operations and subject Appellant to the duties and burdens of a common carrier under the Act, is constitutional	40
(a) The power to regulate commerce does not include the power to convert a private carrier into a common carrier	41
(b) The term "future pipe line company"	44
(c) The public is without interest in Appellant's operations	52

Page

IV. The error of the District Court in dismissing Appellant's petition 61
Conclusion 62
Appendix 63
(1) Chapter 104—Act of February 4, 1887 (24 Stat. 379) 63
(2) Hepburn Amendment of June 29, 1906 (34 Stat. 584) 64
(3) Amendment of February 28, 1920 (41 Stat. 474–478) 67

Table of Cases, Text and Statutes Cited

Acme Fast Freight, Inc., et al. v. *United States et al.*, 30 Fed. Supp. 968; 309 U. S. 638 34
Adams v. *Louisville, N. O. & T. RR. Co.*, 13 So. 932 33
American Railway Express Company v. *Wright*, 91 So. 342 34
Anderson v. *Pacific Coast Steamship Company*, 225 U. S. 187 12
Anniston Manufacturing Company v. *Davis*, 301 U. S. 337 60
Ashwander v. *Tennessee Valley Authority*, 297 U. S. 288 50
Associated Pipe Line Company v. *Railroad Commission of California*, 176 Cal. 518, 169 Pac. 62 58
Blake v. *McKim*, 103 U. S. 336, 339 ..... 8, 60
Bowers v. *Lawyers Mortgage Company*, 285 U. S. 182 34
Bowles, Price Administrator v. *Willingham*, 321 U. S. 503, 518 40
Buck v. *Kuykendall*, 267 U. S. 307 50
Burns Baking Company v. *Bryan*, 264 U. S. 504, 513 53
Carroll v. *Carroll's Lessee*, 16 How. 275, 287 47
Chicago, Indianapolis & Louisville RR. Co. v. *Hackett*, 228 U. S. 559 49
Chicago, Milwaukee, St. Paul & P. Rr. Co. v. *Campbell River Mills Company, Ltd. et al.*, 53 Fed. (2d) 69, 72 21
Col-Tex Refining Company v. *Hart*, 144 S. W. (2d) 909 33
Coolidge v. *Long*, 282 U. S. 596 ..... 41, 59
Crowley v. *Polleys Lumber Company*, 9 Pac. (2d) 1068 34
Currin v. *Wallace*, 306 U. S. 1 40
Curry v. *McCanless*, 307 U. S. 357, 370 40
District of Columbia v. *Murphy*, 314 U. S. 441 60
Driscoll v. *Edison Light & Power Company*, 307 U. S. 104, 115 60
Ex Parte Siebold, 100 U. S. 371, 376 49
Fairmont Creamery Company v. *Minnesota*, 274 U. S. 1 53
Fidelity & Deposit Company v. *Tafoya*, 270 U. S. 426 ..... 43, 51
Foley Securities Corporation v. *Commissioner of Internal Revenue*, 106 Fed. (2d) 731–736 59
Frost & Frost Trucking Company v. *Railroad Commission of California*, 271 U. S. 583 ..... 10, 41, 50, 57
Hamilton v. *Kentucky Distilleries*, 251 U. S. 146 59
Hansberry et al. v. *Lee et al.*, 311 U. S. 32, 42–44 40
Heiner v. *Donnan*, 285 U. S. 312, 326 ..... 40, 59
Humble Oil & Refining Company v. *Hamer*, 167 S. W. (2d) 272 34
In Re Rahrer, 140 U. S. 545, 555 59
Interstate Commerce Commission v. *Baltimore & Ohio R. R. Co.*, 145 U. S. 263 10

Page

Interstate Commerce Commission v. *Brimson*, 154 U. S. 447 40
Interstate Commerce Commission v. *Oregon-Washington Railroad and Navigation Company*, 288 U. S. 14 60
Koenigsberger v. *Richmond Silver Mining Company*, 158 U. S. 41 60
Lawton v. *Steele*, 152 U. S. 133 55
License Cases, 5 How. 504, 583 59
Liggett Company v. *Baldridge*, 278 U. S. 105, 113 53
Lucas v. *Alexander*, 279 U. S. 573, 577 60
Marbury v. *Madison*, 1 Cranch 137 49
McCulloch v. *Maryland*, 4 Wheat 316 49
Michigan Public Utilities Commission et al. v. *Duke*, 266 U. S. 570 ..... 10, 41, 57
Morehead, Warden v. *New York ex rel. Tipaldo*, 298 U. S. 587 59
Munn v. *Illinois*, 94 U. S. 113, 126 53
Nebbia v. *New York*, 291 U. S. 502 ..... 41, 53
New State Ice Company v. *Liebmann*, 285 U. S. 262, 283 ..... 51, 53, 55
Norton v. *Shelby County*, 118 U. S. 425 49
Oklahoma City v. *Sanders*, 94 Fed. (2d) 323, 327 59
Pennsylvania Railroad Company v. *Pittsburgh, L. & W. R. Co. et al.*, 83 Fed. (2d) 861 20
Pennsylvania Railroad Company v. *Public Utilities Commission of Ohio*, 298 U. S. 170 ..... 18, 42
People ex rel. Knowlton v. *Orange County Farmers and Merchants Assn.*, 204 Pac. 873 33
Phelps v. *United States*, 274 U. S. 341 60
Pierce Oil Corp. v. *Phoenix Refining Co.*, 259 U. S. 125 50
"Pipe Line Cases," 234 U. S. 548 ..... 10, 14, 26, 40, 42, 58
Posadas, Collector v. *Natl. City Bank*, 296 U. S. 497, 505 11
Porter v. *Investors Syndicate*, 286 U. S. 461 60
Prairie Oil & Gas Company v. *United States*, 204 Fed. 798 ..... 14, 26
Producers Transportation Company v. *Railroad Commission of California*, 251 U. S. 228 ..... 10, 14, 57
Railroad Retirement Board v. *Alton Railroad Company*, 295 U. S. 330. 40
Reinecke v. *Northern Trust Company*, 278 U. S. 339 60
Ribnik v. *McBride*, 277 U. S. 350 53
Richmond Company v. *United States*, 275 U. S. 331 60
Russian Volunteer Fleet v. *United States*, 282 U. S. 481 60
Sisk v. *White Oak Lumber Company*, 14 Fed. (2d) 552 34
Smith v. *Cahoon*, 283 U. S. 553 ..... 10, 41, 57
State Tax Commission v. *Petroleum Exploration*, 68 S. W. (2d) 777, 779 33
Stimson Lumber Company v. *Kuykendall*, 275 U. S. 207, 210 ..... 10, 57
Taenzer v. *Chicago, R. I. & P. RR. Co.*, 170 Fed. 240, 249 34
Taggart v. *Republic Iron & Steel Company*, 141 Fed. 910 34
Texas Company v. *Stephens*, 100 Tex. 628, 103 S. W. 481, 487 33
Texoma Natural Gas Company v. *Railroad Commission of Texas*, 59 Fed. (2d) 750 41
Thompson v. *Consolidated Gas Utilities Corporation*, 300 U. S. 55 ..... 50, 57, 60
Town of South Ottawa v. *Perkins*, 94 U. S. 260 49

Page

Tyson & Brother v. *Banton*, 273 U. S. 418 ..... 53, 55
United States v. *Chicago, Milwaukee, St. Paul, RR. Co.*, 282 U. S. 311. 40
United States v. *Cooper Corporation*, 312 U. S. 600, 607 11
United States v. *La Franca*, 282 U. S. 568, 574 60
United States v. *Northwestern Ohio Natural Gas Company*, 141 Fed. 198 33
Valvoline Oil Company v. *United States et al.*, 308 U. S. 141 ..... 14, 16
Wall v. *Parrot Silver & Copper Company*, 244 U. S. 407 50
Washington v. *Kuykendall et al.*, 275 U. S. 207 41
Western Union Telegraph Company et al. v. *Foster and Macleod et al.*, 247 U. S. 105 ..... 43, 51
Williams v. *Standard Oil Company*, 278 U. S. 235, 239 ..... 53, 55,56
Wolff Packing Company v. *Court of Industrial Relations*, 262 U. S. 522. 53, 55

TEXT

Judson on Interstate Commerce, Sec. 136, page 220, Second Edition. 33, 35

STATUTES

Interstate Commerce Act, February 4, 1887, 24 Stat. 379 ..... 9, 11, 63
Hepburn Amendment of 1906, 34 Stat. 584 ..... 10, 64
Amendment of 1920, 41 Stat. 474–478, 49 U. S. C. Sec. 1 ..... 13, 67

Statutes:

21 Stat. 31 33
24 Stat. 379 ..... 9, 11
34 Stat. 584 10
38 Stat. 220 33
41 Stat. 474–478 ..... 8, 13
48 Stat. 1064, 1066, 1070 ..... 38, 39
48 Stat. 1102 38
49 Stat. 543 8
54 Stat. 899 8

United States Code:

Title 28, Secs. 45, 45a, 47 and 47a 2
Title 28, Sec. 345, par. 4 2
Title 47, Sec. 7 33
Title 47, Sec. 152 38
Title 49, Sec. 1 ..... 8, 32, 38
Urgent Deficiencies Act of October 22, 1913, C. 32, 38 Stat. 219–221. 2, 3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 75

CHAMPLIN REFINING COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF ON BEHALF OF THE CHAMPLIN REFINING COMPANY

Opinions Below

The majority opinion of the specially constituted District Court for the Western District of Oklahoma and the dissent are reported in 59 Fed. Supplement, pp. 978-986 inc., and appear in the record, Vol. I, pp. 79-93 inc.

The report in question was entered upon reargument, by a majority of the Interstate Commerce Commission on July 12, 1944, Chairman Patterson and Commissioner Porter dissenting, in a proceeding entitled Champlin Refining

Company, Valuation Docket No. 1267, reported in 49 Valuation Reports 542-549 inc., and printed in the Record, Vol. II, pp. 537-546 inc.

The original report in such proceeding was entered on December 14, 1942, by Division 2 of the Interstate Commerce Commission, reported in 49 Valuation Reports 463-470 inc., and printed in the Record, Vol. II, pp. 526-536 inc.

Jurisdiction

The suit is to enjoin enforcement (R. Vol. I, p. 12) of certain orders of the Interstate Commerce Commission. The final decree of the trial court dismissing Appellant's petition (R. Vol. I, p. 113), now before this Court for review, was entered on April 16, 1945, by a specially constituted District Court, organized pursuant to 38 Stat. 220, U. S. C., Title 28, Sec. 47. The petition for appeal (R. Vol. I, p. 114) was filed, and the order of allowance (R. Vol. I, p. 114) was entered April 16, 1945. The cause was docketed in this Court on May 14, 1945 (R. Vol. I, Cover Page).

The jurisdiction of this Court is founded upon the following statutes: Urgent Deficiencies Act of October 22, 1913, C. 32, 38 Stat. 219-221, as amended; U. S. C., Title 28, Secs. 45, 45a, 47 and 47a; and U. S. C., Title 28, Sec. 345, par. 4.

> See Statement as to Jurisdiction heretofore printed in conformity with the rule and now on file in the office of the Clerk of this Court.

Statement of the Case

On May 15, 1941, the Interstate Commerce Commission served upon the Champlin Refining Company copies of Valuation Orders (Nos. 26 and 27, R. Vol. II, pp. 486-522, inc.), together with instructions and sample notes pertaining to the preparation and filing by common carriers by pipe line

of information required for use in valuation of such pipe line properties.

On July 18, 1941, Champlin filed a report (marked Exhibit X, which by stipulation was not included in the printed record by reason of its extended volume) which report was returned to Champlin on July 22, 1941, with the advice that such report could not be considered as in compliance with such valuation orders. (49 Val. Rep. 463; R. Vol. I, p. 161).

Subsequently Champlin filed its petition with the Commission, which as later amended, alleges, among other things, that it is not a common carrier, and is not engaged in transportation within the meaning of the Interstate Commerce Act. ((49 Val. Rep. 463; R. Vol. I, p. 160)

A hearing was held on the petition, briefs were filed and oral argument heard. (49 Val. Rep. 463; R. Vol. II, pp. 526-527)

Division 2 in its report thereon published on December 14, 1942, found adversely to Champlin upon all of its contentions.

A petition for rehearing, reargument and reconsideration was thereupon filed. The petition was granted (except as to rehearing) and reargument was had to the entire Commission. The report by the majority of the Commission (Chairman Patterson and Commissioner Porter entering their dissent) was published on June 12, 1944 (49 Val. Rep. p. 542; R. Vol. II, pp. 537-546) and again found adversely to Champlin upon all of its contentions.

This suit was brought under the provisions of the Urgent Deficiencies Act of October 22, 1913, to set aside and enjoin the enforcement of the order of June 12, 1944, entered upon said report of that date. (R. Vol. I, p. 1)

Champlin is a New Mexico corporation engaged in producing, refining and marketing crude oil and the refined

products thereof. (49 Val. Rep., p. 542; R. Vol. II, p. 527)

The pipe line involved which Champlin solely owns and operates, is a 516-mile products pipe line, consisting of welded 6-inch pipe extending from Enid, Oklahoma, to Rock Rapids, Iowa. In connection with the pipe line, Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa. The construction of the portion of the pipe line from Enid through Hutchinson to Superior, 256 miles, and of the terminal facilities at Hutchinson and Superior, was completed in June, 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at the last-mentioned point were completed in May, 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

For some years prior to 1935, the Champlin business showed a steady decline, because of the construction of competitors' refineries in areas near Champlin markets and the operation of competitors' pipe lines, barge lines, and transport trucks which provided sources of supply near many former Champlin customers, all of which was destructive of Champlin's trade connections in the territory thus affected. The pipe line was built in an effort to meet competitive prices and regain such lost markets. The construction of the pipe line immediately resulted in an upward trend in Champlin's business so that by 1940 the company had reached a volume of business equal to the peak previously enjoyed. That Champlin meets keen competition in the territory served is indicated by the fact

that for the first six months of 1941 the total sales of Champlin in the States of Colorado, Kansas, Nebraska, Iowa, Minnesota, and South Dakota, which are served by the pipe line, equaled 3.5 percent of the whole business of the petroleum industry in those States. (49 Val. Rep. 464; R. Vol. II, pp. 528-529)

The products are marketed at the terminal, at a price which equals the cost at the jobber's place of business of like products sold by Champlin's competitors. (49 Val. Rep. 465; R. Vol. II, p. 530)

Champlin retains title at all times to the products while in transit in said products pipe line, and until sold from the storage tanks at the terminals. (R. Vol. I, p. 209)

Champlin has never transported, offered to transport or been asked to transport any products belonging to any other company or person; its pipe line does not connect with any other pipe line but only with the storage tanks at the three terminal points; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank-car racks and is not made directly from the pipe line in any instance; no tariffs have been filed with the Interstate Commerce Commission or with any State Commission or regulatory body (R. Vol. I, pp. 110-111); and the right of eminent domain has never been exercised by Champlin in connection with this pipe line. (49 Val. Rep. 467; R. Vol. II, p. 532)

Champlin has never made exchanges of products in the operation of said pipe line. (R. Vol. I, p. 236)

The Questions Involved and Their Importance

The ultimate questions presented by this appeal are substantial and the answer to them will determine whether a re-

finer of crude oil products may, without invoking the exercise of the right of eminent domain, but solely by the use of privately-obtained right-of-way, construct across state lines, a private products pipe line as a plant facility for the moving of such refinery products, *only*, out of refinery operating tanks, into storage tanks located in other States, for *future* sale by such refiner from such storage tanks *only*, without thereby dedicating such pipe line to the use of its competitors as a common carrier for hire.

The trial court did not hold Champlin to be a common carrier in fact. It held it to be a "statutory common carrier," and that it is engaged in transportation within the meaning of the Interstate Commerce Act. (R. Vol. 1, pp. 83, 84) Therein lines the error of the trial court's judgment.

Specification of Assigned Errors

The following errors of the District Court have been assigned, and will be urged in this brief:

1. The error of the District Court in holding that Appellant is engaged in interstate transportation by pipe line within the meaning of the Interstate Commerce Act, and is therefore subject to the regulatory authority and control of the Interstate Commerce Commission. (Assignments of Error, R., Vol. I, p. 115; Vol. II, p. 957.)

2. The error of the District Court in holding that Appellant in the operation of its pipe line is a common carrier within the meaning of Section 1 of the Interstate Commerce Act, and is therefore subject to the Interstate Commerce Act. (Assignments of Error, R., Vol. I, p. 115; Vol. II, p. 957.)

3. The error of the District Court in holding that the Interstate Commerce Act, construed to reach Ap-

pellant's operations and subject Appellant to the duties and burdens of a common carrier under the Act, is constitutional. (Assignments of Error, R., Vol. I, p. 115; Vol. II, p. 958.)

4. The error of the District Court in dismissing Appellant's petition. (Assignments of Error, R., Vol. I, p. 115; Vol. II, p. 959.)

Statutes Involved

On the merits of the case, the statute involved is Section 1 of the Interstate Commerce Act (41 Stat. 474-478, 49 U. S. C. Sec. 1). In 1906 Congress, through enactment of the Hepburn Amendment to the Interstate Commerce Act, first acted to regulate interstate transportation of oil by means of pipe lines. The section was again amended in 1920, and again in 1934, 1935 and 1940.

A consideration of the first amendment is important in determining the application of the last amendment to the facts of this case.

The Hepburn Amendment (34 Stat. 584), in so far as it pertains to transportation of oil by pipe line, is printed in the Appendix, post, pages 64-67, inc. The language of the amendment which is of importance here is as follows:

> "That the provisions of this Act shall apply to *any corporation or any person or persons engaged in the transportation of oil or other commodity,* except water and except natural or artificial gas, *by means of pipe lines,* or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, *who shall be considered and held to be common carriers within the meaning and purpose of this Act,** and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or

* Emphasis here and throughout the argument is supplied, unless otherwise indicated.

partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one state or territory of the United States, or the District of Columbia, to any other state or territory of the United States, or the District of Columbia, * * *."

The amendment of 1920 (41 Stat. 474-478, 49 U. S. C. Sec. 1), in so far as it pertains to transportation of oil by pipe line, is printed in the Appendix, post, pages 67-71, inc. The language of importance here is as follows:

"(1) That the provisions of this Act shall apply to common carriers engaged in * * *

"(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * *

"(3) The term 'common carrier' as used in this Act shall include all pipe line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire."

By later amendments (48 Stat. 1102, 49 Stat. 543, 54 Stat. 899, U. S. C. Title 49, Sec. 1) the part of subparagraph (3) of Section 1, last quoted above, was changed so that it now reads as follows:

"The term 'common carrier' as used in this Act shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire * * *."

ARGUMENT

I

The error of the District Court in holding that Appellant is engaged in interstate transportation by pipe line within the meaning of the Interstate Commerce Act, and is therefore subject to the regulatory authority and control of the Interstate Commerce Commission.

The Interstate Commerce Act is directed at transportation in interstate commerce. Disregarding for the present the Government's contention, sustained by the trial court, that the Amendment of 1920 brought within the reach of the Act all interstate pipe lines, the issue as to whether or not Appellant's pipe line operations are within the coverage of the Act depends upon whether or not Appellant is engaged in "transportation" within the meaning of the Act. The trial court found in the facts a basis for holding that Appellant is engaged in "transportation" within the meaning of the Act. The trial court's statement was "plaintiff is transporting oil products *to market for sale to the public* and thus is engaged in transportation in commerce within the meaning of the Act" (R., Vol. I, p. 83).

(a) The Original Act to Regulate Commerce

Section 1 (see Appendix, pages 63-64) of the original statute (An Act to Regulate Commerce, Act of February 4, 1887, 24 Stat. 379) provided:

> "That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment . . . ."

The purpose of the statute was to prohibit rebates, discriminations and other abuses by common carriers, to require that they establish and post rates, fares and charges, and to prohibit their charging unjust or unreasonable rates. *Interstate Commerce Commission* vs. *Baltimore and Ohio Railroad Company,* 145 U. S. 263. The statute was directed at existing carriers. It is obvious from the language above quoted that the term "transportation" was used to describe interstate transportation by persons engaged as carriers for others. There is an absence of any language indicating a different intent. The use of the term "transportation of passengers" would make this conclusion inescapable even if the term "common carrier" did not appear in the text of the statute. If the term "transportation" had been used to include the movement by a person of his own property from one State to another by use of his own private means, the statute would then have had the effect of subjecting such person and his property to the burdens, duties and regulations imposed by the statute. So construed, the statute would have been in conflict with the due process clause of the Fifth Amendment. (Chief Justice White's concurring opinion in *The Pipe Line Cases,* 234 U. S. 548, 562-563; *Smith* vs. *Cahoon, Sheriff,* 283 U. S. 553; *Frost & Frost Trucking Co.* vs. *Railroad Commission of California,* 271 U. S. 583; *Stimson Lumber Company* vs. *Kuykendall,* 275 U. S. 207, 210; *Michigan Public Utilities Commission et al.* vs. *Duke,* 266 U. S. 570; *Producers Transportation Company* vs. *Railroad Commission of California,* 251 U. S. 228).

(b) The Hepburn Amendment of 1906

The language which appeared in the original statute of 1887, *supra,* which was carried forward in the Hepburn Amendment (34 Stat. 584), is italicized in the following quotation from Section 1 of the Hepburn Amendment:

"*That the provisions of this Act shall apply to any* corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any *common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment)* * * *."

The word "transportation" was used a number of times in the original statute. There is no language or expression in the original statute (24 Stat. 379) to indicate that the term was there used in different senses in different instances. In the absence of expressions to indicate a contrary intent, it will be presumed that the word was used in the same sense in each instance. (*United States* vs. *Cooper Corporation*, 312 U. S. 600, 607.) The term was also used a number of times in the Hepburn Amendment, and it is to be presumed that it was there used in each instance in the same sense.

The rule is that where words and provisions used in an original statute are repeated in an amendment, it will be presumed that they were used in the amendment in the same sense in which they had been used in the original statute, unless there is some expression to indicate a contrary intent. This rule of construction is corollary to the common law rule that the provisions of a prior statute, in so far as they are reproduced in an amendment, are to be construed as a continuation of the provisions of the prior law and not as a new enactment. (*Posadas, Collector, vs. Na-*

tional City Bank, 296 U. S. 497, 505; *Anderson vs. Pacific Coast Steamship Co.*, 225 U. S. 187.)

The language of the original statute does not leave any uncertainty or ambiguity concerning the sense in which the term "transportation" was used. It is clear that the term was used to describe the business of those engaged in transportation of passengers and in carriage of property for others. Used, as the term was, in the Hepburn Act in the same connections as it had been used in the original statute, and the Hepburn Amendment having the same general purposes as the original statute, the term should be treated as having the same meaning in the amendment as it had in the original statute. This conclusion is fortified by the fact that the term "railroad" was used repeatedly both in the original statute and in the Hepburn Amendment. There is no language in either the original statute or the amendment to suggest that the Congress had in mind any type of railroad operation except railroads engaged in interstate transportation of passengers and in carriage of property for others.

In the Hepburn Amendment, interstate transportation of oil by pipe line was brought within the reach of the Interstate Commerce Act. In the very clause which so extended the Act it was provided that the Act should apply to "persons engaged in transportation of oil * * * by means of pipe lines, or partly by pipe lines and partly by railroad." The term "railroad" was evidently used in that clause in the same sense in which it was used in other clauses in the original statute and in the Hepburn Amendment; that is, as descriptive of railroads engaged in carriage of property for others. Certainly the Congress did not intend in this same clause to refer to pipe lines used exclusively by the owner thereof to move such owner's oil as an incident to another business, and to tie that movement to a further

transportation of the oil by common carrier railroad. Congress was speaking of transportation of oil by pipe line carrier engaged in carriage for others and of that type of transportation connected with further transportation by common carrier railroads.

(c) The Amendment of 1920 to the Interstate Commerce Act

In the Amendment of 1920 (41 Stat. 474-478, see Appendix, pages 67-71) there was some change in the language of Section 1 of the Interstate Commerce Act, as amended by the Hepburn Amendment (34 Stat. 584, see Appendix pages 64-67). In the following quotation from Section 1 of the Act, as amended in 1920, the language which was carried forward from the Hepburn Amendment is italicized:

> "(1) *That the provisions of this Act shall apply* to common carriers *engaged in*—
>
> (a) *The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment;* or
>
> (b) *The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water;* or
>
> (c) The transmission of intelligence by wire or wireless:— • • •
>
> (3) The term 'common carrier' as used in this Act shall include all pipe-line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire. Wherever the word 'carrier' is

used in this Act it shall be held to mean 'common carrier'."

Consistent with the above-stated rules of construction, this Court, in *Valvoline Oil Company vs. United States et al.*, 308 U. S. 141, 145, in speaking of the change of language in the Amendment of 1920, said: "In the present Act there is a change of language, but we perceive none in meaning." The term "transportation," then, when used in the 1920 Amendment, has the same meaning as it had when it was used in the Hepburn Amendment.

If there was ever any uncertainty concerning the meaning of the term "transportation," as used in the Interstate Commerce Act as originally enacted and as amended in 1906 and in 1920, the meaning of the term has been made certain by the opinions of this Court. It refers to and is descriptive of interstate transportation by persons engaged as carriers for others. The statement is warranted by the following opinions of this Court.

(1) The Pipe Line Cases

The holding in *The Pipe Line Cases*, 234 U. S. 548, that the Hepburn Amendment brought within the reach of the Interstate Commerce Act the pipe line operations of the Standard Oil and affiliated companies, but not the operations of the Uncle Sam Oil Company, was necessarily founded upon the conclusion that the term "transportation" was used to describe interstate transportation by a carrier engaged in transporting oil for others. The exception of the Uncle Sam Oil Company from the order reversing the decree of the Commerce Court (*Prairie Oil and Gas Company vs. United States*, 204 Fed. 798) was necessarily founded upon the conclusion that the term "transportation" as used in the Hepburn Amendment was not descriptive of the pipe line operations of that com-

pany, involving only movement of the pipe line owner's oil from one state to another as an incident to its business.

It is clear from the debates in Congress and the opinion in *The Pipe Line Cases* that the Hepburn Amendment was directed at the pipe line operations of the Standard Oil and affiliated companies. The Standard Oil Company and its affiliates had control of the only practical means of oil transportation between the Rocky Mountains and the Atlantic seaboard. They made use of their monopoly of this means of transportation to refuse to carry oil through their pipe lines unless the producers of the oil would sell their oil to the pipe line owners at the latters' price. They carried "everybody's oil," although they compelled "outsiders to sell it before taking it into their pipes." The facts in respect to the pipe line operations of these companies were found to be such that the companies were "common carriers now in everything but form." In substance and effect, they were furnishing a means of transportation for others. They were "not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price." They were common carriers in substance and the Court held that the Congress had power to require them to become common carriers in form (234 U. S. 561).

The Uncle Sam Oil Company's pipe line was used exclusively to transport the oil of that company from its wells in one state to its refinery in another state. The product "when reduced at the refinery passes into the markets of consumption." (Chief Justice White's concurring opinion, 234 U. S. 562.) The question presented as to that company was whether or not such a pipe line operation was "transportation" within the meaning of the term as used in the Hepburn Amendment. On this

subject the Court, speaking through Mr. Justice Holmes, said (234 U. S. 562):

> "It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, *we do not regard it as falling within the description of the Act,* the transportation being merely an incident to use at the end."

Chief Justice White did not agree with the majority in the conclusion that the Uncle Sam Oil Company's pipe line operations did not constitute "transportation" within the meaning of the statute, but based his concurrence in the holding as to that company on the ground that "it would be impossible to make the statute applicable to it (Uncle Sam Oil Company) without violating the due process clause of the Fifth Amendment, since to apply it would necessarily amount to a taking of the property of the company without compensation" (234 U. S. 563).

It does not make any difference whether the view of the majority or the view of the Chief Justice is accepted, for the effect of each is that the Hepburn Amendment did not bring within the reach of the Interstate Commerce Act a pipe line used exclusively in moving the oil of the pipe line owner from one state to another as an incident to the pipe line owner's business of producing and refining crude petroleum and marketing the refined products thereof.

(2) The Valvoline Case

Valvoline Oil Company vs. United States, et al., 308 U. S. 141, is the only case involving pipe line transportation which has been decided by this Court under the Inter-

state Commerce Act as amended in 1920. Valvoline Oil Company was engaged in operating 1,426 miles of pipe line connected with 9,020 wells in Pennsylvania, Ohio and West Virginia. It purchased oil at the wells from the well owners, using a part of it to manufacture products sold by Valvoline and selling a part of it to other refiners in Pennsylvania and West Virginia. However, none of the oil so sold to others was produced outside of the state in which the purchasing refiner was located. Valvoline said in its brief in this Court (page 25, R. Vol. II, p. 946) that the wells served by its pipe line were "stripper wells scattered over Western Pennsylvania, West Virginia and a small part of Ohio," and that "these wells are so small that common carriers cannot afford to construct, maintain and operate lines for transportation of oil in such small quantities." The inference to be drawn from this statement is that, as to wells served by its pipe line, Valvoline had a monopoly of the only practical means of transportation, as had been true of the Standard Oil and affiliated companies in *The Pipe Line Cases*. Valvoline was engaged in purchasing oil from many sources and transporting it by pipe line. The facts in respect to Valvoline's pipe line operations in their essentials were like the facts in respect to the pipe line operations of the Standard Oil and affiliated companies involved in *The Pipe Line Cases*. The only difference was one of degree, which was regarded as "immaterial" (308 U. S. p. 147).

In approving the holding in *The Pipe Line Cases* as to the pipe line operations of the Uncle Sam Oil Company, the Court said in the *Valvoline Case* (308 U. S. 146): "This was held not to be transportation under the Act." In holding Valvoline under the Act, the Court said: "* * * it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline." The carriage by Valvoline, like the carriage by the Standard

Oil Company and affiliates, was in substance and effect for others; and was, therefore, transportation within the meaning of the Act. It was transportation for others.

The *Valvoline Case* was decided upon the same principles upon which it had been held in *The Pipe Line Cases* that the pipe line operations of the Standard Oil and affiliated companies were under the Act; and in pointing out in the *Valvoline Case* the basis upon which the pipe line operations of the Uncle Sam Oil Company were held not to be within the Act, the Court made clear the difference between the pipe line operations of Valvoline and those conducted by the Uncle Sam Oil Company.

(3) The Pennsylvania Railroad Company Case

In *Pennsylvania Railroad Company* vs. *Public Utilities Commission of Ohio,* 298 U. S. 170, the issue was whether intrastate rates applied to switching and delivering four carloads of coal in Youngstown, Ohio, or the charge should be based on the interstate rates from the mines to the point of delivery. Pittsburgh Coal Company operated coal mines in Pennsylvania and by means of its private barges and privately owned and operated railroad moved the coal from its mines in Pennsylvania to its cleaning and sizing plant near Negley, Ohio. After being cleaned and sized at the plant near Negley, Ohio, the four carloads of coal were shipped by common carrier for delivery to consignees in Youngstown, Ohio. Up to the sizing plant the carriage was solely by the Pittsburgh Coal Company, making use of its own facilities. The Pennsylvania Railroad Company and the Erie Railroad Company contended that the local or intrastate rates for switching and delivering the cars in Youngstown should not be applied for that service, but that the charge should be based upon interstate rates from mines to destination. The Court, speaking through Mr. Justice Cardozo, said (298 U. S. 175):

> "The only transportation of this coal by a common carrier of merchandise either by railroad or by water was intrastate transportation in Ohio between Negley and Youngstown. The transportation between Pennsylvania and Ohio was by the owner, who was not a common carrier, but furnished implements of carriage for its own use exclusively. Appellants would have us hold that this interstate transportation by an owner who does not carry for anyone else will be tacked to the intrastate transportation by railroads who are in business as common cariers, and the movement thus consolidated brought within the statute. The statute and the decisions as we read them forbid this unifying process."

In illustrating the consequence of such a construction of the Interstate Commerce Act, as appellants urged in that case, the Court further said (298 U. S. 176-177):

> "The situation laid before us would not be changed in its essentials if a cooperative association of farmers doing business in Pennsylvania close to the state line were to use a fleet of trucks belonging to the association or its members to carry milk or vegetables from Pennsylvania to a railroad station in Ohio. Even though this were done systematically and not casually or in sporadic instances, the ensuing transportation by rail, if kept within Ohio, would not be transportation between the states within the meaning of the Act of Congress."

The Court thereby made clear that the term "transportation" as used in Section 1 of the Interstate Commerce Act as it exists today means transportation by persons engaged as carriers for others, and that it does not include the movement of property from one state to another by the owner through the use of his own railroad or pipe line. The Court also made clear that even though such private transportation by an owner of his property or products is *for the pur-*

pose of reaching markets, nevertheless the movement is not "transportation" within the meaning of that term as used in Section 1 of the Interstate Commerce Act.

Elsewhere in the opinion, the Court made it even clearer that the Interstate Commerce Act is not directed at an owner's interstate movement of his own property or products by his own private means. The Court said (298 U. S. 174):

> "The Interstate Commerce Act (49 U. S. C. sec. 1 et seq.) *is aimed at common carriers exclusively,* sec. 1(1), (3), and not even at all these."

Section 1, cited in the quotation last above, is the section which includes the provision that the Act "shall apply to common carriers engaged in * * * the transportation of oil * * * by pipe line." Section 3, cited in the quotation, is the section which provides that "the term 'common carrier' shall include all pipe line companies * * * and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire."

(4) The Pittsburgh, Lisbon and Western Railroad Company Case

The transportation facilities of the Pittsburgh Coal Company were involved in *Pennsylvania Railroad Company et al. vs. Pittsburgh L. & W. R. Co. et al.* (C. C. A. 6), 83 Fed. (2d) 861 (certiorari denied, 299 U. S. 572), decided subsequent to the decision in *Pennsylvania Railroad Company vs. Public Utilities Commission of Ohio, supra.* The issue involved in the later case was the right of the Pittsburgh Coal Company to extend its railroad track without authority from the Interstate Commerce Commission. It was the purpose of the coal company to use the track exclusively for the transportation of its coal by means of its own cars and locomotives. In the course of the opinion, holding that it was not necessary that the coal company

secure a certificate of convenience and necessity, the Court said (83 Fed. (2d) 865):

> "The track between Negley and Smith's Ferry is not an instrument of interstate commerce, for no one other than the Coal Company can use it. * * * It is a purely private facility for the private transportation of the Coal Company's product. * * * Its transportation upon the lands of the Coal Company or on the lines of the Lisbon and the Youngstown & Suburban is wholly incidental to the principal purpose of the parent company. There is no interstate commerce in the shipment of this coal by means of private transportation facilities before it reaches the Brush Run preparation plant. * * *
>
> *"Since the coal is carried over this track by its owner, in its own private vehicles, in order to reach its own private plant, its transportation does not constitute interstate commerce."*

(5) The Campbell River Mills Company Case

In *Chicago, M., St. P. & P. R. Co.* vs. *Campbell River Mills Co., Ltd., et al.* (C. C. A. 9), 53 Fed. (2d) 69, 72 (certiorari denied, 285 U. S. 536), after quoting parts of Sections 1 and 2 of the Interstate Commerce Act, the Court held that the term "transportation" meant transportation by common carrier, and in so holding said:

> "The use of the word 'such' in connection with 'transportation' would seem to imply that the transportation which is meant is transportation by common carrier; and the phrase 'as aforesaid' similarly indicates that goods 'not shipped from a foreign country to the United States' *by a common carrier* would not come under the purview of that chapter. Since subsection 1 deals entirely with defining 'common carriers' subject to the provisions of the chapter, it follows that the phrase 'as aforesaid' qualifies the 'shipping' referred to in subsection 2 as being shipping by common carrier."

The cases compel the conclusion that Appellant's pipe line operations are not "transportation" within the meaning of the Act. In the cases cited and discussed above, the term "transportation" as used in the Interstate Commerce Act was treated as descriptive of transportation conducted by persons engaged as carriers in the carriage of property for others. The term was held not to include a person engaged in moving his own property by his own means from one state to another as an incident to his principal business.

The Uncle Sam Company's use of its pipe line was for the private purpose of moving its oil as an incident to its principal business. The Pittsburgh Coal Company was using its facilities exclusively for a like purpose. Appellant, like those companies, uses its pipe line exclusively for the purpose of moving its products as an incident to its integrated business of producing and refining crude petroleum and marketing the refined products thereof. Such a pipe line operation is not "transportation" within the meaning of the Interstate Commerce Act, as the term has been considered and applied in the cases cited. The situation was otherwise with respect to the Valvoline Company and the Standard Oil Company and its affiliates. They were furnishing transportation to the producers of the oil and their operations were, in effect, transportation for others.

(d) The Fact That Appellant Uses Its Pipe Line to Move Its Products to Market Does Not Bring Such Operations Within the Act.

The majority of the trial court found, in the fact that Appellant's pipe line is used to move its products to market centers, a basis for distinguishing this case from the case of the Uncle Sam Oil Company. On this point the trial court said (R. Vol. I, p. 83):

> "The Uncle Sam Oil Company case must be distinguished from the instant case upon the ground that Plaintiff is transporting oil products *to market for sale to the public* and thus is engaged in transportation in commerce within the meaning of the Act."

The difference stated by the trial court to exist between the facts of this case and the facts in the *Uncle Sam Oil Company* case is an imaginary and not a real difference. The Uncle Sam Oil Company's pipe line was used to move its oil from its wells to its refinery, "and the product of course when reduced at the refinery passed [illegible] into the markets of consumption." (Concurring opinion of Chief Justice White, 234 U. S. 562.)

Certainly, there is not such difference between the movement of oil from field to refinery by means of a private pipe line as a step toward marketing products, and moving oil products from refinery to storage near market centers by means of private pipe line as a further step toward marketing products, as to justify the assumption that Congress did not intend to include the first movement within the terms of the Act, but did intend to include the second movement.

There is an utter absence of language which would suggest that Congress intended the purpose of the movement to be a factor for determining what is "transportation" within the Act and what is "private transportation" not within the Act. The Standard Oil and affiliated companies and Valvoline Oil Company were engaged in moving oil from fields to markets. The Uncle Sam Oil Company was moving its crude oil for the ultimate purpose of selling the products thereof. The operations of the Standard Oil and affiliated companies and the Valvoline Oil Company were held under the Act; the operations of the Uncle Sam Oil Company were held not within the reach of the Act, yet each of them was engaged in moving

oil with the ultimate view of marketing. The fact that the oil was being moved toward market was not the controlling factor in determining the applicability of the Act to any of these companies. In the *Valvoline* case the Court said, speaking of the operations of the Standard Oil and affiliated companies, (308 U. S. 144, 145):

> "• • • Whether the oil so owned and transported was ultimately used by the carrier in its own operations *or sold to others was in this connection immaterial.*"

Thus it appears that the fact that the oil was being moved to market is not a controlling factor in determining the applicability of the statute.

Again, the Pittsburgh Coal Company was using its facilities to move its coal "to market for sale to the public," but that fact was not sufficient to bring its operations within the coverage of the Interstate Commerce Act.

The Interstate Commerce Act is directed at persons engaged in transportation for others. The purpose of the Act is to regulate the transportation business of those who enter into engagements to transport property for others or to transport passengers. The object of the statute is to reach and regulate the transportation business of those who sustain toward others the relation of carrier of property to shipper, or carrier to passenger. That such is the purpose and object of the Act is clear from the language in which it is cast. The movement of property or products to market by means of railroad or pipe line, standing alone, is not sufficient to bring the movement within the meaning of the term "transportation" as used in the Act. The element of carriage for others is essential to the "transportation" covered by the the Act.

The Champlin pipe line involved in this litigation does not haul "crude oil." It is solely used for the transporta-

tion of refined products before sale. Obviously no one can have any interest in such products other than the owner thereof. It is undisputed that Champlin has never carried products for others; that it exclusively transports its own products; that there is no point except at the Enid refinery where products can be put into the line; that Champlin has never made exchanges with other companies of products moved through the line; that no products have ever been purchased to be transported through the line; and that Champlin does not earmark any products moved through the line for sale or delivery to others, but that all products come to rest in storage tanks at terminals before any sale or delivery thereof is made to anyone.

II

The error of the District Court in holding that Appellant in the operation of its pipe line is a common carrier within the meaning of the Interstate Commerce Act.

The majority of the trial court did not hold Champlin to be a "common carrier" in fact, nor a "common carrier" in substance, as was held against the Standard and affiliated companies in *The Pipe Line Cases*. The holding was that Appellant is a "statutory common carrier." In holding that Appellant is "a statutory common carrier;" that the provisions of the Act apply to "*all engaged in the interstate transportation of oil* • • • by pipe line;" and that "Congress intended to include all pipe lines without regard to whether they were private lines or carried for the public," the majority of the trial court (1) gave to the Act a breadth of meaning which this Court has twice refused to ascribe to it, (2) failed to take into account the sense in which the term "transportation" is used in the Act, and (3) neglected to give proper consideration to the limitations which the Fifth Amendment imposes on the power of Congress to take private property for a public use.

(a) This Court Has Refused to Give the Act the Breadth of Meaning Given to It by the Trial Court

In *The Pipe Line Cases*, 234 U. S. 548, and in the *Valvoline Case*, 308 U. S. 141, the United States and the Interstate Commerce Commission urged this Court to construe the Act as the majority of the trial court has construed it in this case.

In the opening sentence upon the first point in the brief for the United States in the *Pipe Line Cases* (R. Vol. II, p. 712-13) it was contended that,

> "Congress deliberately intended the act to apply to every interstate pipe line. It intended to compel every interstate pipe line to become a common carrier as a condition precedent to engaging in interstate commerce. Whether any particular pipe line had or had not been a common carrier prior to the passage of the act is wholly immaterial."

The foregoing contention of the Government is stated in the summary of briefs in *The Pipe Line Cases* (234 U. S. 549) as follows:

> "Congress intended the Act to apply to every interstate oil-carrying pipe line and to compel every such interstate pipe line to become a common carrier as a condition precedent to engaging in interstate commerce."

The Commerce Court had upheld the Government's contention. (*Prairie Oil & Gas Co. v. United States*, 204 Fed. 798.) That case reached this Court as *The Pipe Line Cases*. In holding that the operations of the Uncle Sam Oil Company were not within the coverage of the Act, this Court overruled the Commerce Court and rejected the Government's contention that "Congress intended the Act to apply to every interstate oil-carrying pipe line and to compel every such interstate pipe line to become a common carrier

as a condition precedent to engaging in interstate commerce."

In the *Valvoline Case* the United States and the Interstate Commerce Commission (their brief p. 13, R. Vol. II, p. 900), urged that "since Valvoline is a pipe line company engaged in the interstate transportation of oil, it comes directly within the statutory definition"; and again (their brief p. 21, R. Vol. II, p. 905), that "The fact that Valvoline is a pipe line company is determinative of the fact that it is a common carrier within the meaning of the Act."

In holding that "* * * it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline" (308 U. S. 146), this Court declined to dispose of the *Valvoline Case* upon the simpler basis, urged by the Government and Interstate Commerce Commission, namely, that Valvoline is a pipe company and that all such companies are subject to the Act. Valvoline was held subject to the Act because it was engaged in "transportation" within the meaning of the Act. What the Court said in the opinion concerning the term "all pipe line companies," considered in connection with the bases upon which the statute was held applicable to Valvoline, clearly indicates that the Court considered the term "all pipe line companies" to be descriptive of such companies as were engaged in "transportation" within the meaning of the Act.

While the Amendment of 1920, involved in the *Valvoline Case*, made certain changes in the language of the Hepburn Amendment, involved in *The Pipe Line Cases*, there was no change in the meaning of the statute. This appear not only from the statement of this Court (308 U. S. 145) but also from the fact that the pipe line operations of Valvoline were held subject to the Act as amended in 1920 upon substantially the same fact bases as the Standard Oil Company

and its affiliates had been held subject to the Hepburn Amendment in the earlier case.

If this Court had considered tenable the contentions of the Government in *The Pipe Line Cases* with respect to the meaning and purpose of the Act, the Uncle Sam Oil Company's pipe line operations logically could not have been held to be beyond the reach of the Act. If the above stated contention, urged by the Government in the *Valvoline Case*, had been considered sound, it would not have been necessary to base the holding that Valvoline's operations were within the reach of the Act upon the statement that, "• • • it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline." The fact that these contentions were rejected in those cases, coupled with the statement in the *Valvoline Case* (308 U. S. 145) that the meaning of the Act was not changed by the 1920 Amendment, compels the conclusion that the language of the 1920 Amendment is not any broader or more inclusive than the language of the Hepburn Amendment, and demonstrates that the trial court erred in holding appellant to be a statutory common carrier.

As a basis, in part at least, for its holding (R. Vol. I, p. 85) that Congress intended to include within the Act "all pipe line companies without regard to whether they were private lines or carried for the public," the majority of the trial court quoted a sentence from the opinion in *The Pipe Line Cases*. The sentence (234 U. S. 559) is: "The provisions of the Act are to apply to any person engaged in the transportation of oil by means of pipe lines." It is only by reading the sentence with an eye blinded to the balance of the opinion that support can be found therein for the breadth of meaning which the majority of the trial court has given to the Act in this case. The sentence means that the provisions of the Act were intended to apply to any

person engaged in transportation, within the meaning of the Act, viz: transportation for others, the type of transportation at which the Act was directed. If the sentence were to be given the literal meaning which the majority of the trial court has given it in this case, the writer of the sentence, Mr. Justice Holmes, could not have held the operations of the Uncle Sam Oil Company to be beyond the reach of the Act.

Further, if Congress had intended the Act "to include all pipe lines without regard to whether they were private lines or carried for the public," as was held by the trial court in this case, and the intent were given effect, the Act would conflict with the due process clause of the Fifth Amendment. This thought will be more fully developed under Subdivision III of the Argument.

Briefly stated, the *Valvoline Case* and *The Pipe Line Cases* held that it was the carriage of oil for others that determined the applicability of the Act. The Standard and affiliated companies were held subject to the Act because they were "common carriers in substance"; they carried "all oil offered if only the offerers would sell at their price;" they were common carriers "in everything but form"; "they carried everybody's oil to market." It was "the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline." This Court in those cases did not hold that either the Hepburn Amendment or the Act as amended in 1920 made common carriers of all companies operating pipe lines across state lines, as the majority of the trial court held in this case. In *The Pipe Line Cases* the exception was made with respect to the Uncle Sam Oil Company, and in the *Valvoline Case* the Court approved that exception. The Court in both cases refused to follow the Government's contention that all companies transporting petroleum by pipe line across state lines are subject to the Act, but held that

those pipe lines are subject to the Act which are in substance common carriers although not so in technical form.

It should be noted in this connection that when arguments were heard on the motion for rehearing, Circuit Judge Murrah said (R. Vol. I, pp. 134-135):

> "I certainly want to say so far as I am concerned that as far as the interpretation or construction of the statutory language is concerned, I have no difficulty in finding that Congress intended to make the Champlin Pipe Line Company a common carrier within the meaning of this statute. I agree with you that the Supreme Court has not gone that far. There isn't any question about it as far as I am concerned. They have refused to go that far. I will put it that way. I say they have refused to do so. I don't know. I can't tell from reading those decisions whether they thought Congress could not do it or Congress did not intend to do it, but I am perfectly willing for them to clear it up, but it does worry me, the question of whether or not we are giving an unconstitutional construction to that. We are not unmindful of the force of our decision."

The quoted statement is significant, as it is important. It is an admission by the majority of the trial court that their decision was not in harmony with the decisions of this Court in *The Pipe Line* and the *Valvoline Cases*.

(b) The Act deals only with such as are "common carriers" in fact, and does not purport by use of the term "all pipe line companies" to create "common carriers" by legislative fiat

The Interstate Commerce Act proposed to correct existing evils by requiring the carriers at which it was directed to furnish transportation at reasonable rates upon reasonable demand; and, to make the proposed remedy effective, Congress required the filing and publishing of rates and charges, prohibited rebates and other discriminations, and

prescribed penalties for violation of the requirements and prohibitions of the Act.

The terms "all pipe line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping car companies;" as used in the definition of the term "common carriers" in the 1920 Amendment, should be considered in the light of the overall purpose of the Act and in the light of the express declaration that "The provisions of this Act shall apply to common carriers * * *." They should also be considered in the light of the meaning in whch the terms "transportation" and "transmission" are used in the Act. The first sentence of Section 1 declares that the provisions of the Act shall apply to "common carriers" engaged in the "transportation" of passengers or property, or in the "transmission" of intelligence, evidently referring to "transportation" and "transmission" for others than the carrier—transportation and transmission service rendered by common carriers. The terms first quoted were evidently used in their generally accepted and ordinarily understood meaning to describe and bring within the reach of the Act any company whose business is that of an interstate carrier engaged in the character of transportation or transmission ordinarily conducted by companies of one or the other of the named classes—companies engaged as common carriers in interstate transportation of passengers or in interstate transportation of property for others or in interstate transmission of intelligence for others. The "transportation" of passengers is necessarily a carriage for others than the carrier. Certainly the term "transportation" was not used in one sense when referring to the "transportation" of passengers and in another sense when referring to the "transportation" of property.

It would not do to suppose that Congress intended by the Act to impose the duties and obligations of common

carriers upon all persons who move their property from one state to another by private means of one or the other of the types of means mentioned in the Act; or to suppose, as the trial court has held, that Congress purposed by the use of the term "all pipe line companies," to provide that all persons, firms and corporations engaged in moving oil from one state to another shall be or operate as common carriers, and so by legislative fiat subject privately owned and used pipe lines, like Appellant's pipe line, to the duties and obligations of common carriers. Such a purpose would be offensive to the Fifth Amendment, as is hereinafter shown.

In defining "common carrier" to include "all pipe line companies; telegraph, telephone, and cable companies operating by wire or wireless; * * *." Congress evidently had in mind companies engaged in interstate "transportation" within the meaning of the term as used in the Act. So understood, the term would refer only to companies engaged in business as common carriers in "the transportation of oil * * * by pipe line * * *; or the transmission of intelligence by wire or wireless * * *." In the *Pennsylvania Railroad Company case, supra* (298 U. S. 170, 174) this Court, citing the section of the Act in which the terms now under consideration were used, said, as we have heretofore stated, that, "The Interstate Commerce Act (49 U. S. C., Sec. 1 *et seq.*) *is aimed at common carriers exclusively,* Sec. 1(1), (3), and not even at all these." Only if the term, "all pipe line companies" is given the interpretation appellant advances, could that statement of this Court stand as a true interpretation of the Act. Conversely, the interpretation given to the term by the majority of the trial court cannot stand if the Act "is aimed at common carriers exclusively," as was said by Mr. Justice Cardozo.

The terms "all pipe line companies; telegraph, telephone, and cable companies operating by wire or wireless; ex-

press companies; sleeping car companies;" have well understood meanings. The term "all pipe line companies" is descriptive of companies engaged as common carriers in transporting oil by means of pipe line. It does not include a company owning purely private lines, limited in use to some other business or incidental to the business of the owner. *State Tax Commission vs. Petroleum Exploration,* 68 S. W. (2d) 777, 779; *Texas Company vs. Stephens,* 100 Tex. 628, 103 S. W. 481, 487; *Col-Tex Refining Company vs. Hart,* 144 S. W. (2d) 909; *United States vs. Northwestern Ohio Natural Gas Company,* 141 Fed. 198; *Judson on Interstate Commerce,* Sec. 136, p. 220, Second Edition.)

The term "telegraph" companies is descriptive of companies engaged as common carriers in transmitting intelligence. It does not include a railroad operating telegraph lines for the safe and expeditious movement of its trains, but not for use by the public. (*Adams vs. Louisville N. O. & T. RR. Co.* (Miss.) 13 So. 932). In the Post Roads Act (14 Stat. 221, 47 U. S. C. 1) Congress used the term "telegraph company," and provided that such a company might construct lines over the public domain and along military or post roads. Later another statute (21 Stat. 31, 47 U. S. C. 7) was enacted extending the benefits of the former statute to railroads that operated telegraph lines. Evidently it was thought that the term "telegraph company," used in the original statute, did not include a railroad that operated telegraph lines.

The term "telephone" companies is descriptive of companies engaged as common carriers in supplying telephone service for others. It does not include a non-profit association which maintains a telephone system for the convenience and use of its owners only. (*People ex rel. Knowlton vs. Orange County Farmers & Merchants Assn.* (Cal.), 204 Pac. 873.)

The term "express" companies is descriptive of companies engaged in the business of transporting parcels or other moveable property in the capacity of a common carrier. (*American Ry. Express Co. vs. Wright* (Miss.), 91 So. 342.) It does not include forwarding companies who collect, consolidate, ship and distribute less than carload lots of freight and express shipments. (*Acme Fast Freight, Inc., et al. vs. United States et al.*, 30 Fed Supp. 968, affirmed, *Acme Fast Freight, Inc., et al. vs. United States et al.*, 309 U. S. 638.)

Similarly, an oil company operating a line of railroad extending into its refinery is not a railroad corporation (*Humble Oil & Refining Co. vs. Hamer*, 167 S. W. (2d) 272); a lumber company operating a private railroad as an incident to its business is not a railroad company (*Sisk vs. White Oak Lbr. Co.* (Dist. Ct.), 14 Fed. (2d) 552; *Taenzer vs. Chicago, R. I. & P. RR. Co.*, 170 Fed. 240, 249); a steel company operating tracks and switch engines for use in switching freight cars is not a railroad company (*Taggart vs. Republic Iron & Steel Co.*, 141 Fed. 910; a lumber company operating a logging railroad is not subject to a statute directed against railroad companies (*Crowley vs. Polleys Lbr. Co.*, 9 Pac. (2d) 1068); a company doing a mortgage loan business, which writes title insurance as an incident thereto, is not an "insurance company" (*Bowers vs. Lawyers Mtg. Co.*, 285 U. S. 182).

There is no language in the Amendment of 1920 to indicate that the terms "pipe line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping car companies;" were used in any sense other than their usual and ordinary meaning. It would do violence to the general purpose of the Act if it were assumed that these terms were used to include corporations which operated pipe lines, telegraph lines, or telephone lines

as an incident to another business, and not for the purpose of making the service available to others than the owners.

It is a matter of common knowledge that many pipe line companies and railroad companies construct along their rights-of-way telegraph or telephone lines and use them exclusively in transmitting messages necessary to the efficient operation of their properties. Appellant owns and operates for weather reports, maintenance of the pipe line and transmission of orders and directions, such type of telephone line from Enid to Rock Rapids (R. Vol. I, p. 169). If the language of the Act were subject to the construction which the majority of the trial court has placed upon it, then Appellant was a telephone company, under the 1920 Amendment, and could have been compelled to open such telephone line to the use of the public in the transmission of messages. Obviously the Congress, in naming telephone companies in the definition of "common carriers," did not intend to include, as such, an oil refining company which operates a private telephone line in the operation of its marketing business; and, by the same reasoning, Appellant cannot be said to be a "pipe line company" because of its operation of a private pipe line as a marketing facility. See *Judson on Interstate Commerce*, Sec. 136, page 220, Second Edition, wherein it is said:

> "As to the owners of pipe lines who are not common carriers, and who use their pipe lines solely for the transportation of their own products, it would seem that they are not included in the act."

It must be concluded that the term "all pipe line companies" was used in the 1920 Amendment to describe companies whose principal business is that of acting as common carriers in the interstate transportation of oil by pipe line; that the term "telegraph companies" was used to describe companies whose principal business is that of

acting as common carriers in the interstate transmission of intelligence; that the term "telephone companies" was used to describe companies whose principal business is that of acting as common carriers in the interstate transmission of intelligence.

When the quoted terms are so understood Appellant's pipe line operations are not within the Act.

The concluding clause of the first sentence of paragraph (3) of Section 1 of the Act, "and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire," does not limit the generality of the next preceding clause naming certain classes of companies, but adds individuals to the classes of companies so named and also adds corporations, which, though not engaged principally in business as common carriers, do as a part of their business engage "in such transportation or transmission as aforesaid as common carriers for hire."

If Congress had intended by the term "all pipe line companies" to include all persons and corporations engaged in operating pipe lines which cross state lines, as the majority of the trial court held, the concluding clause of the statutory definition of "common carrier" would have been a purposeless use of words, in so far as pipe line operations were concerned.

The fact that in the concluding clause Congress used the term "all persons, natural or artificial" demonstrates that Congress recognized that not all owners of interstate pipe lines are "pipe-line companies." The term "pipe-line company" would not, if treated in its ordinary meaning, include a company whose principal business is not that of a common carrier in interstate transportation of oil by pipe line, but which does, as a part of its business, engage in such transportation as a common carrier. Therefore, addi-

tional language was necessary to reach individuals and also to reach companies of the latter description. This was accomplished by the use of the concluding clause of the definition, namely, "and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers *for hire.*" But the Act applies to such persons or companies only if their operations are conducted "for hire." So interpreted the statute does not include Appellant.

It therefore must be concluded that the last clause of the definition pointed out above evidently was intended to bring within the operation of the Act individuals and companies whose principal business is not "such transportation or transmission as aforesaid as common carriers for hire," but who, in connection with their principal business do, by one or the other of the named means, engage in "such transportation or transmission as aforesaid as common carriers for hire." The term "such transportation or transmission as aforesaid" evidently referred to "The transportation of passengers or property * * * by railroad; or the transportation of oil * * * by pipe line * * *; or the transmission of intelligence by wire or wireless," by common carrier, as used in Section 1 of the Act.

Such construction preserves the dominant purpose of the Act—to reach persons and companies engaged in interstate transportation for the public, to require them to render adequate service at reasonable rates, to prohibit discrimination, rebating and other abuses. So construed, the exception of the Uncle Sam Oil Company in *The Pipe Line Cases*, in the light of the statement in the *Valvoline Case* that the amendment did not change the meaning of the original Act, is justified. The statement in the *Valvoline Case* that the last clause of subsection (3) is a "conjunctive not a modifier" and does not affect the generality

of the first clause, is then given its obviously intended meaning.

In 1934 Congress created the Federal Communications Commission (48 Stat. 1064, U. S. C. Title 47, Sec. 152) and therein by sub-paragraph (b) of Section 602 (48 Stat. 1102) provided that:

> "The provisions of the Interstate Commerce Act, as amended, in so far as they relate to communication by wire or wireless, or to telegraph, telephone, or cable companies operating by wire or wireless, except the last proviso of section 1(5) and the provisions of section 1(7), are hereby repealed."

The effect of this repeal was to delete from the first sentence of sub-paragraph (3) of section 1 of the Interstate Commerce Act, defining the term "common carrier," all reference to telegraph, telephone and cable companies operating by wire or wireless, with the result that the sentence was then made to read as follows:

> "The term 'common carrier' as used in this Act shall include all pipe line companies; express companies; sleeping-car companies; and all persons, natural or artificial engaged in such transportation as aforesaid as common carriers for hire." (See Title 49, Sec. 1, 1944 pocket parts, U. S. C. A.)

In the Federal Communications Commission Act (48 Stat. 1066), it was provided that:

> "'Common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, in so far as such person is so engaged, be deemed a common carrier."

In Section 201 of the Federal Communications Commission Act (48 Stat. 1070) it is provided that:

> "It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor • • •"

If Congress had intended in the 1920 Amendment to the Interstate Commerce Act, by use of the terms "telegraph, telephone and cable companies operating by wire or wireless," to bring within the regulatory powers of the Interstate Commerce Commission all such companies, without regard as to whether they operate as common carriers or not, it does not seem reasonable to suppose that Congress in enacting the Federal Communications Commission Act would have stripped the Interstate Commerce Commission of all power over such companies and have subjected only such of them as are common carriers to the jurisdiction of the Federal Communications Commission. The fact that Congress did take from the Interstate Commerce Commission jurisdiction over telegraph, telephone and cable companies and give to the Federal Communications Commission jurisdiction over such of them as are common carriers, indicates that Congress considered that the term "telegraph, telephone, and cable companies operating by wire or wireless," as used in the Interstate Commerce Act, was intended to refer only to such companies as are common carriers. Such legislative interpretation, while not conclusive, is persuasive. It follows that, if the term "telegraph, telephone, and cable companies operating by wire or wireless," as used in the definition of "common carrier" in the Interstate Commerce Act, was used to refer only to such of those companies as are common carriers, then the term "all pipe-line companies" must have been used in the definition in the same sense;

namely, as referring to "pipe-line companies" which are common carriers.

Appellant, the trial court to the contrary notwithstanding, is not a "pipe line company," or a "common carrier," within the terms as used in the Act, nor a common carrier within the common law meaning of the term. Private transportation by Appellant of its own products through its own pipe line as an incident to its business of producing and refining crude petroleum and marketing the products thereof, is not within the Act.

III

The error of the District Court in holding that the Interstate Commerce Act, construed to reach Appellant's operations and subject Appellant to the duties and burdens of a common carrier under the Act, is constitutional.

The power delegated to Congress to regulate commerce among the several states is not an absolute power. It must be exercised in subjection to the due process clause of the Fifth Amendment. (*Currin vs. Wallace*, 306 U. S. 1; *The Pipe Line Cases*, 234 U. S. 548, 560-561, 563; *Railroad Retirement Board vs. Alton RR. Co.*, 295 U. S. 330; *United States vs. Chicago, Milwaukee, St. Paul & Pac. RR. Co.*, 282 U. S. 311; *Interstate Commerce Commission vs. Brimson*, 154 U. S. 447.) The power granted to Congress is the power "to regulate commerce." Congress is without power "to do anything about commerce which is not regulation."

In general the restraints imposed on the Congress by the due process clause of the Fifth Amendment are the same as the restraints imposed on the States by the due process clause of the Fourteenth Amendment. (*Bowles, Price Administrator, vs. Willingham*, 321 U. S. 503, 518; *Hansberry et al. vs. Lee et al.*, 311 U. S. 32, 42-44; *Curry vs. McCanless*, 307 U. S. 357, 370; *Heiner vs. Donnan*, 285 U. S.

312, 326; *Coolidge vs. Long*, 282 U. S. 596; *Nebbia vs. New York*, 291 U. S. 502.)

Because of the due process clause of the Fourteenth Amendment, a State cannot "by mere legislative fiat or by any regulating order of a commission convert into a public utility" a pipe line which has never been devoted by its owner to use by the public, "or make its owner a common carrier." (*Producers Transportation Company vs. Railroad Commission of California*, 251 U. S. 228; *Michigan Public Utilities Commission vs. Duke*, 266 U. S. 570; *Frost & Frost Trucking Company vs. Railroad Commission of California*, 271 U. S. 583; *Washington vs. Kuykendall, et al.*, 275 U. S. 207; *Smith vs. Cahoon, Sheriff*, 283 U. S. 553.) While a state may, in the reasonable exercise of the police power, regulate the operations of a private carrier for hire, it cannot, consistently with the Fourteenth Amendment, by legislative fiat, require such private carrier to become a common carrier. Any legislative requirement that such private carrier become a common carrier would amount to a prohibited taking of property. (*Smith vs. Cahoon, Sheriff, supra; Frost & Frost Trucking Company vs. Railroad Commission of California, supra; Michigan Public Utilities Commission vs. Duke, supra.*)

Again, where a pipe line owner uses its pipe line only to transport its gas to market, a state cannot require such pipe line owner to become a common carrier. (*Texoma Natural Gas Company* vs. *Railroad Commission of Texas*, D. C., 59 Fed. (2d) 750, 753.)

(a) The Power to Regulate Commerce Does Not Include the Power to Convert a Private Carrier Into a Common Carrier.

Because of the due process clause of the Fifth Amendment, the Congress cannot by legislative fiat convert a private pipe line into a public utility, or require its owner to

become a common carrier. (Chief Justice White's concurring opinion, *The Pipe Line Cases*, 234 U. S. 548, 562-563.) The power to regulate commerce "cannot be made a means of exercising powers not entrusted to it (Congress) by the Constitution." (Mr. Justice Holmes' majority opinion, 234 U. S. 560-561.) The power to require a private carrier to become a "common carrier" is withheld from Congress by the Fifth Amendment.

The Constitution protects a citizen in his right to move his property from one state to another by his privately owned and operated means. This right existed before the Constitution was adopted, and was not surrendered in the adoption of the Constitution. The right may be enjoyed by using the highways and privately owned and operated vehicles, or by purchasing a right of way and constructing and operating a private railroad or pipe line. (*Pennsylvania Railroad Company* vs. *Public Utilities Commission of Ohio*, 298 U. S. 170.) The exercise of the right may be regulated by Congress; but Congress cannot, under the guise of regulation, condition the exercise of the right by requiring the user to become a common carrier and make of his property a public utility. The power to regulate the exercise of a right does not include the power to take for a public use private property essential to the exercise of the right. "Conduct may be regulated which cannot be initially commanded • • •." (Mr. Justice McKenna's dissenting opinion in *Pipe Line Cases*, 234 U. S. 565), and so, while Congress may regulate interstate commerce, Congress cannot command that a citizen engage in interstate commerce as a common carrier or otherwise. Any such attempt would necessarily involve an effort to take property without due process of law.

Exercise by a governmental agency of a constitutional power, such as the power to regulate interstate commerce, cannot be made the means of accomplishing a forbidden

or unconstitutional result, such as the taking of private property for a public use without compensation. This principle is stated in and its application illustrated by the following opinions of this Court:

Fidelity & Deposit Co. vs. *Tafoya,* 270 U. S. 426, involved the question of the right of a state to refuse to admit a foreign corporation to do business within its borders. It was held that while the state may for any reason, or no reason, refuse the right to enter such state, such refusal cannot be conditioned upon such corporation's agreement to forego a constitutional right. Mr. Justice Holmes (270 U. S. 434), in the opinion, said:

> "Coming then to the merits we assume in favor of defendants that the state has the power and constitutional right arbitrarily to exclude the plaintiff without other reason than that such is its will. But it has been held a great many times that the most absolute seeming rights are qualified, and in some circumstances become wrong. One of the most frequently recurring instances is when the so-called right is used as part of a scheme to accomplish a forbidden result."

Western Union Telegraph Company et al. vs. *Foster and Macleod et al.,* 247 U. S. 105, involved the validity of a state commission order requiring the sale of information to a particular person. The information was purchased by the telegraph company from the stock exchange and transmitted to other states and sold by the telegraph company. In that case the Court, in an opinion by Mr. Justice Holmes, said (247 U. S. 114):

> "It is suggested that the state gets the power from its power over the streets which it is necessary for the telegraph to cross. But if we assume that the plaintiffs in error under their present charters could be excluded from the streets, the consequence would not follow. Acts generally lawful may become unlawful when done to accomplish an unlawful end, • • • and a con-

stitutional power cannot be used by way of condition to attain an unconstitutional result."

So, Congress cannot under the guise of regulation attain the unconstitutional result of forcing a person to surrender his property to a public use without compensation. While Congress has the power "to regulate commerce • • • among the several states," such grant of power is limited to the power "to regulate," and cannot be exercised to compel a citizen to surrender a right in property protected by the Fifth Amendment.

The Interstate Commerce Act, as construed by the majority of the trial court, preserves to the citizen his right to construct a pipe line from one state to another on a right of way acquired by purchase and to use the pipe line for the purpose of moving his own oil as an incident to his principal business, but it imposes upon the exercise of the right the condition that the pipe line be made a public utility and the owner become a common carrier. So construed, the Interstate Commerce Act is made to attain an unconstitutional end by forcing the citizen to surrender rights in property which are protected against such action by the due process clause of the Fifth Amendment.

(b) The Term "Future Pipe Line Company"

The majority of the trial court states (R. Vol. I, p. 86) that Appellant is a 'future' pipe line company," and grounds the holding upon the fact that Appellant's pipe line was constructed after the enactment of the 1920 Amendment. One sentence in the opinion in *The Pipe Line Cases* is the basis of the conclusion of the majority of the trial court that Congress can compel any person who may in the future construct a pipe line for use exclusively in moving his own oil from one state to another to assume the duties and burdens of a common carrier. The effect of this sen-

tence as treated by the trial court is to hold that by the 1920 Amendment Congress has prohibited any person from building a pipe line from one state to another for the transportation of oil unless such person becomes a common carrier and makes of his pipe line a public utility. The sentence is (234 U. S. 561): "So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid." Upon the basis of that sentence the trial court held that Appellant "is a 'future' pipe line company;" and that the Act, construed to make Appellant a common carrier, is valid. When considered in connection with its context, the sentence does not support such conclusion. To give such effect to the sentence, it is necessary that it be isolated from the balance of the opinion.

In *The Pipe Line Cases* the Court found that the Hepburn Amendment was directed at certain pipe line operations and that its evident purpose was "to bring within its scope pipe lines that although not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price"—pipe lines that were common carriers "in everything but form." The constitutional question was whether or not Congress had power under the Commerce Clause to regulate as a common carrier a pipe line that in effect had been devoted by its owners to the use of the public and which, as operated, was a common carrier in substance, though not a common carrier in technical form as understood at common law. The Court found that there was no prohibited taking of property in allowing the amendment to have its intended application to such existing pipe lines. The sentence with reference to future pipe line amounts to nothing more than a statement that Congress could for the future require pipe lines which might be operated as common carriers in substance to be-

come common carriers in form. In such a situation there is no prohibited taking of property, for exercise of the power to regulate is based on the fact that the owner has first devoted his property to the use of the public and is a common carrier in everything but form. Mr. Justice Holmes certainly did not mean to say that for future application Congress could condition the constitutional right of a citizen to use his own private means in moving his property from one state to another upon the citizen's making a common carrier of the means of accomplishing such movement. To so interpret the sentence would charge him with saying that the power to regulate commerce may be exercised to require a citizen to surrender rights in property which are within the protection of the Fifth Amendment.

Congress may act to regulate persons engaged, or to engage, as carriers in moving property from one state to another and to regulate the means by which such movement is accomplished. The owner of the means of accomplishing such movement can dedicate his means to a public use, but the power to regulate commerce cannot be exercised to force an owner to make such dedication of his property. Admittedly the power "to regulate commerce" cannot be exercised to take for a public use property which, at the time of the enactment of the statute, was being used in moving property from one state to another but which the owner had not dedicated to a public use. It is, however, assumed by the majority of the trial court upon the basis of the above-quoted sentence from *The Pipe Line Cases* as to future pipe lines, that Congress may require one who in the future uses his private pipe line in the private movement of his property from one state to another, to surrender his pipe line to a public use. The constitutional protection against the taking of property without due process of law is not directed exclusively against statutes that may have an *ex post facto* or present application, it is

also directed against statutes intended for prospective application. Until the owner of property voluntarily dedicates his property to a public use, Congress is without power to require its dedication to a public use, or condition the right to use the property for some lawful purpose upon a requirement that the property be made available to the use of the public.

If it once be conceded, as it must be, that the right exists to build a private pipe line from one state to another over a purchased right of way, the constitutional objection to a statute requiring that the owner of such pipe line make of it a public utility, is just as valid when applied to pipe lines constructed subsequent to the enactment of the statute, as it is when applied to pipe lines that existed prior to the enactment of the statute.

The only consideration given to the constitutional questions by the majority of the trial court is found in the next to the last paragraph of its opinion. There the whole matter is disposed of on the basis of the one sentence concerning future pipe lines, isolated from its context.

The majority of the court, in the case at bar, exhausted its consideration of the constitutional questions with the simple statement that Appellant is "a 'future' pipe line company."

In considering this statement of Mr. Justice Holmes, we are given the choice of treating it either as *obiter dictum* or a statement applicable only to the issues of that case. We must attribute to this great jurist either an attempt to fix the legal status of corporations yet unborn, or "an application of the judicial mind to the precise question necessary to be determined." (*Carroll vs. Carroll's Lessee*, 16 How. 275, 287).

It requires no citation of authority to establish the proposition that statements in a court's opinion should apply

to the precise issue involved, rather than matters not before the court, if such application can reasonably be made; and it is not only reasonable, but logical as well, to say that Mr. Justice Holmes' reference to "future pipe lines" was intended to refer to pipe lines of the same nature as those involved in the case before him, that is, "common carriers in substance, if not in form."

Considering this statement as an integral part of its context, one need only look to the sentence immediately preceding, to reach the conclusion that Mr. Justice Holmes recognized that the statement was limited by the constitutional requirements of due process. The preceding sentence is:

> "The control of Congress over commerce among the States cannot be made a means of exercising powers not entrusted to it by the Constitution, but it may require those who are common carriers in substance to become so in form."

The last sentence cannot be reconciled with the interpretation placed by the majority of the trial court on the first quoted sentence, namely, that Congress has unlimited power to restrict and regulate private business, but it is in accord with the concurring opinion of Chief Justice White in the same case (234 U. S. 562) in which it was said that the Uncle Sam Oil Company could not be brought under the statute "without violating the due process clause of the Fifth Amendment."

If the holding of the majority below is followed to its logical conclusion, the doctrine announced becomes most remarkable. It means that a statute, which in its inception violates the Constitution, is enforceable against any person engaged in an activity against which the statute is directed, provided he commences that activity subsequent to the enactment of the statute.

By this procedure, the Constitution would become impotent simply by the passage of time. Individuals born and corporations organized subsequent to the passage of legislation could not look to the Constitution as the "supreme law of the land," as declared in Article VI, Clause 2 of the Constitution, but must consider subsequently enacted statutes as superior to the Constitution. Overruled would be a mass of decisions of this Court, beginning with *McCulloch* vs. *Maryland*, 4 Wheat. 316, and *Marbury* vs. *Madison*, 1 Cranch. 137. A large number of individuals and corporations would be governed by one law and the remainder by another law. One organization might be engaged in private business while its competitor would be required to operate as a public utility, depending on when Congress had impressed the public utility status on the business. Abrogated would be the holding of this Court in *Norton* vs. *Shelby County*, 118 U. S. 425, wherein it was held:

> *"An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."*

and in *Chicago, Indianapolis & Louisville Railway Company* vs. *Hackett*, 228 U. S. 559; *Ex Parte Siebold*, 100 U. S. 371, 376, and other cases where a similar principle was announced. Condemned would be the decision in *Town of South Ottawa* vs. *Perkins*, 94 U. S. 260, where this Court said:

> "It would be an intolerable state of things if a document purporting to be an act of the legislature could thus be a law in one case and for one party, and not a law in another case and for another party; a law today, and not a law tomorrow; a law in one place, and not a law in another in the same State. And whether it be a law, or not a law, is a judicial question, to be settled and determined by the courts and judges."

It is thus submitted that it could hardly have been the intention of Mr. Justice Holmes to render the Constitution impotent and wreck a large body of constitutional law by a single sentence wholly unnecessary to the decision in which it was written.

This is not to say there may not be cases in which a person may be estopped to claim constitutional immunities. A person who has received and accepted benefits under a statute may be estopped to claim that the statute is unconstitutional, as where a foreign corporation attacks the constitutionality of a state statute under which it has received benefits. *Wall, et al.* vs. *Parrot Silver & Copper Company*, 244 U. S. 407; *Pierce Oil Corporation* vs. *Phoenix Refining Company*, 259 U. S. 125. But it is equally true that where no benefit is received there is no estoppel. *Buck* vs. *Kuykendall*, 267 U. S. 307; *Ashwander* vs. *Tennessee Valley Authority*, 297 U. S. 288; *Thompson* vs. *Consolidated Gas Utilities Corporation*, 300 U. S. 55.

In the case at bar there are no elements of estoppel. Appellant has received no benefits from the Act. Indeed, the Interstate Commerce Act does not purport to confer benefits; it only imposes burdens. It is purely a regulatory measure. Instead of claiming anything under the Act Appellant has at all times consistently asserted that the Act has no application to its business.

Finally, in pursuing the inquiry into the meaning intended by Mr. Justice Holmes in his "future pipe lines" statement, we obtain much light from his later opinions.

In *Frost and Frost Trucking Company* vs. *Railroad Commission of California*, 271 U. S. 583, this Court held that a state statute, ostensibly enacted to regulate the use of state highways, was unconstitutional because it had the effect of requiring private carriers to become common carriers. In his dissenting opinion, rendered long after the decision in *The Pipe Line Cases, supra*, Mr. Justice Holmes

said: "I see nothing in this Act that would require private carriers to become common carriers, but if there were such a requirement, it * * * would not be before us *now*." The statement is not in harmony with the position that Mr. Justice Holmes, in *The Pipe Line Cases*, was adjudicating the status of future lines, nor does it accord with the contention that a legislature has the authority to impress a common carrier status upon a private carrier.

Again, in the dissenting opinion of Mr. Justice Brandeis, Mr. Justice Holmes concurring, in *New State Ice Company* vs. *Liebmann*, 285 U. S. 262, 283, there is this statement:

> "Of course, a legislature cannot by mere legislative fiat convert a business into a public utility. Producers Transportation Co. v. Railroad Commission, 251 U. S. 228, 230."

The cases of *Western Union Telegraph Company et al.* vs. *Foster and Macleod et al.*, 247 U. S. 105, and *Fidelity and Deposit Company of Maryland* vs. *Tafoya*, 270 U. S. 426, cited above, in which Mr. Justice Holmes delivered the opinions of this Court, involved questions of the power of a state to deprive a corporation of its rights under the Federal Constitution as a condition to doing business within the state. Conceding that the state might arbitrarily exclude a corporation from doing business within its borders "without other reason than that such is its will," Mr. Justice Holmes nevertheless held that this right could not be used "to accomplish a forbidden result," that is, to deprive the corporation of its constitutional rights (*Fidelity and Deposit Company of Maryland* vs. *Tafoya, supra*). In those cases the Court specifically held that a corporation's rights could not be taken from it as a condition of doing business in a state. In view of these holdings, it could hardly be contended that Mr. Justice Holmes intended to hold that Congress, by ordinary enactment, could deprive a corpo-

ration of its constitutional rights. For, as this Court has said in *Hamilton* vs. *Kentucky Distilleries, supra*, the restraints imposed by the Fifth Amendment upon Congress are the same as those which apply to the police powers of the state under the Fourteenth Amendment.

It is submitted, therefore, that in accordance with ordinary rules of construction and in the light of subsequent adjudicatory statements by Mr. Justice Holmes, there is no basis for the holding of the majority of the trial court as to the meaning of his statement about "future pipe lines."

Manifestly, the statement was directed to the "precise question necessary to be determined," and nothing else; that is, future pipe lines "in substance" could be subjected to the provisions of the statute, as well as those which were pipe lines "in form."

Moreover, if the above quoted sentence had meant what the trial court thought it meant, then this Court could have disposed of the *Valvoline Case* on the holding that it was a "future" pipe line company, for Valvoline extended its line into West Virginia in 1913, and into Ohio in 1926 (Valvoline's Brief, 4; R. Vol. II, p. 939).

(c) The Public Is Without Interest in the Appellant's Operations

The majority in the trial court based their decision solely on an interpretation of the words of the statute. They went no further than that. They were done with the case when they concluded that the language of the statute was broad enough to include private owners of pipe lines, whether they operated as carriers or not. They gave little consideration to the issue of whether the public has any interest in Champlin's line or Congress has the power, by naked legislative fiat, to convert a private business into a public utility. Yet this Court has spoken on these con-

stitutional questions so many times that they can hardly be ignored in a proper interpretation of the principles applicable to this case.

The basis of power in the Government to regulate a private business is that the business must be "affected with a public interest." This Court announced that principle many years ago (*Munn* vs. *Illinois*, 94 U. S. 113, 126), and has consistently held ever since that a statute which undertakes to regulate a business not clothed or affected with a public interest violates the due process clause of the Constitution. *New State Ice Company* vs. *Liebmann*, 285 U. S. 262, 278; *Burns Baking Company* vs. *Bryan*, 264 U. S. 504, 513; *Liggett Company* vs. *Baldridge*, 278 U. S. 105, 113; *Wolff Packing Company* vs. *Court of Industrial Relations*, 262 U. S. 522; *Tyson & Brother* vs. *Banton*, 273 U. S. 418; *Fairmont Creamery Company* vs. *Minnesota*, 274 U. S. 1; *Ribnik* vs. *McBride*, 277 U. S. 350; *Williams* vs. *Standard Oil Company*, 278 U. S. 235, 239.

It is true that the phrase "affected with a public interest" is not subject to positive definition, but as said in *Williams* vs. *Standard Oil Company, supra*:

> "Nothing is gained by reiterating the statement that the phrase is indefinite. By repeated decisions of this Court, beginning with Munn v. Illinois, 94 U. S. 113, that phrase, however it may be characterized, has become the established test by which the legislative power to fix prices of commodities, use of property, or services, must be measured."

Whether or not a particular business is affected with a public interest depends upon the facts and circumstances peculiar to such business in its relation to the public. This was aptly stated by this Court in *Nebbia* vs. *New York*, 291 U. S. 502:

> "It results that a regulation valid for one sort of business, or in given circumstances, may be invalid

> for another sort, *or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts.* • • •
>
> "It is clear that there is no closed class or category of businesses affected with a public interest, and the function of courts in the application of the Fifth and Fourteenth Amendments is *to determine in each case* whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory."

To satisfy the requirements of this principle this Court set out in detail in its opinion in the *Nebbia* case, *supra*, the facts, circumstances and conditions under which it concluded that the milk industry in New York was subject to regulation. In *Munn* vs. *Illinois*, *supra*, this Court at great length recounted the facts to show that the grain elevator business was charged with a public interest. The same was true of the many other cases involving this question, both those in which the Court upheld the regulation and those in which the Court condemned it as a violation of due process.

Yet in this case the majority of the trial court declined to consider the facts at all. They stopped with a finding that Congress intended to include all pipe lines, whether public or private, within the application of the statute, as witness the following language of their opinion:

> "Congress intended to include all pipe lines without regard to whether they were private lines or carried for the public" (R. Vol. I, p. 85).

And again:

> "Plaintiff attempts to demonstrate that it does not fall within the coverage of the Act by asserting that it is not in fact a common carrier. The Act makes it a statutory common carrier" (R. Vol. I, p. 86).

In taking this position the majority of the trial court erred. This Court has repeatedly held that "the mere declaration by a legislature that a business is affected with a public interest is not conclusive of the question" and that the "circumstances of its alleged change from the status of a private business and its freedom from regulation into one in which the public have come to have an interest *are always a subject of judicial inquiry.*" (*Wolff* vs. *Industrial Court*, 262 U. S. 522, 536; *Tyson & Brother* vs. *Banton*, 273 U. S. 418, 431; *Lawton* vs. *Steele*, 152 U. S. 133; *New State Ice Company* vs. *Liebmann*, 285 U. S. 262; *Williams* vs. *Standard Oil Company*, 278 U. S. 235; *Nebbia* vs. *New York*, 291 U. S. 502.

A judicial inquiry into the facts of this case will disclose that the public has no interest in operation of a pipe line such as that owned by Appellant. Indeed, no claim is made that Appellant ever held itself out as a common carrier of petroleum products by pipe line, or ever carried the products of another. It simply operated the line as a plant facility for its own convenience in getting its products to market. So if there is any public interest involved, it is derived from the nature of the business conducted and not by any dedication on the part of Appellant. But here again the test fails. The evidence shows conclusively that the public receives no benefits from this line, either in services or costs of petroleum products, over those existing prior or subsequent to the construction of the line. Likewise, a cessation in the operation of the line would result in no change whatever in general marketing conditions of petroleum products to the public. The evidence is undisputed that the prices at which Champlin sells its products at the three terminals on its line are fixed by competitive conditions existing at these places, over which Champlin has no control, and bear no relation to the cost of moving the

products by pipe line. Again, the company does only about three and one-half per cent of the business in the trade area served by its products line. (R. Vol. II, pp. 528-529.) The service to the public would be no different if Champlin's business were discontinued. Absent here are all the factors upon which this Court bottomed its decision in *The Pipe Line Cases, supra*, namely, monopoly of transportation, monopoly of market, forced sales by producers, power to fix prices, combination of pipe lines, and the carrying of "everybody's oil to market." As heretofore stated, it is admitted that no crude oil moves through this line; that Champlin uses the line exclusively to move its own products; that it has never carried for nor made exchanges of products with others; that it is operated so that no products could be put into the line at any point other than at the Enid Refinery nor taken out at any point other than at the three storage terminals; that no products have ever been purchased to be transported through the line; and that no products shipped from Enid have ever been consigned for delivery to others but all such products are moved to Champlin's terminals where they are marketed by Champlin. All the facts and circumstances negative any interest on the part of the public in Champlin's line. The necessity for a factual showing of the public interest in the line becomes more impelling when it is remembered that this Court has held that the principal business conducted by Appellant—dealing in petroleum products—to which business this pipe line is solely tributary, is not a business affected with a public interest. *Williams* vs. *Standard Oil Company*, 278 U. S. 235.

But this is not all. Specifically, this Court has held directly in a number of cases that it is beyond the power of a legislature, absent any showing of the public's interest, by legislative fiat to convert property used exclusively in the business of a private carrier into a public utility and to make the owner thereof a public carrier, for the reason that

that would be taking private property for public use without just compensation, in violation of due process. *Producers Transportation Company* vs. *Railroad Commission of California*, 251 U. S. 228; *Michigan Public Utilities Commission et al.* vs. *Duke*, 266 U. S. 570; *Frost and Frost Trucking Company* vs. *Railroad Commission of California*, 271 U. S. 583; *Smith* vs. *Cahoon*, 283 U. S. 553; *Thompson* vs. *Consolidated Gas Utilities Corporation*, 300 U. S. 55; *Stimson Lumber Company* vs. *Kuykendall*, 275 U. S. 207, 210.

Exactly in point, and dealing with a petroleum pipe line, is the case of *Producers Transportation Company* vs. *Railroad Commission of California, supra*, where the Court said (page 230):

> "It is, of course, true that if the pipe line was constructed solely to *carry oil for particular producers* under strictly private contracts and never was devoted by its owner to public use, that is, to carrying for the public, *the State could not by mere legislative fiat or by any regulating order of a commission convert it into a public utility or make its owner a common carrier; for that would be taking private property for public use without just compensation, which no State can do consistently with the due process of law clause of the Fourteenth Amendment.*"

The opinion in the *Producers* case was written by Mr. Justice Van Devanter, in which Mr. Justice Holmes concurred. To understand fully the effect of this decision one must examine its background. The opinion was rendered on appeal from a decision of the Supreme Court of California in the case of *Producers Transportation Company* vs. *Railroad Commission of California*, 176 Cal. 499, 169 Pac. 59, and involved the construction of a statute of the State of California purporting to regulate pipe lines. Closely associated with the *Producers* case is another decision by the Supreme Court of California rendered at the

same time and involving the same statute, styled *Associated Pipe Line Company* vs. *Railroad Commission of California*, 176 Cal. 518, 169 Pac. 62. The latter decision is cited with approval by Mr. Justice Van Devanter in the *Producers* case.

The facts in these two California cases show that the State of California had enacted a statute purporting to regulate oil pipe lines, one section of which declared every individual, association or corporation using, operating, owning, managing, or controlling a pipe line to be a common carrier, regardless of whether it had voluntarily devoted its line to the use of the public. In *Associated Pipe Line Company* vs. *Railroad Commission of California, supra*, the Supreme Court of California held that the latter section violated the due process clause of the Constitution and that the Associated Pipe Line Company was not a common carrier under the Act. The facts in the *Associated* case showed that Associated and Kern Oil and Trading Company jointly constructed a pipe line for the carrying of their own oil and that no oil had been transported through the line other than that belonging to the two owners. In the *Producers* case, however, the Supreme Court of California found that Producers Transportation Company had devoted its property to a public use.

Speaking through Mr. Justice Van Devanter, the Supreme Court affirmed the decision in the *Producers* case, and cited the *Associated* case (page 231) as an authority. Significantly, the opinion brings the *Producers* case within the rule of *The Pipe Line Cases*, 234 U. S. 548; and by the citation of the *Associated* case as an authority, there is implicit in the decision the inference that Associated would not be a common carrier under the provisions of the Interstate Commerce Act.

In the cases last cited the announced rules involved restraints upon the power of the states under the Four-

teenth Amendment. These rules apply to the case at bar, however, for it has been repeatedly stated by this Court that the limitation of due process imposed upon the states by the Fourteenth Amendment is no different from that imposed upon Congress by the Fifth Amendment. *Heiner* vs. *Donnan*, 285 U. S. 312, 326; *Coolidge* vs. *Long*, 282 U. S. 582, 596; *Foley Securities Corporation* vs. *Commissioner of Internal Revenue* (Eighth Circuit), 106 Fed. (2d) 731, 736; *Morehead, Warden* vs. *New York ex rel. Tipaldo*, 298 U. S. 587.

Furthermore, the power of Congress to regulate business under the Commerce Clause of the Constitution is no greater than that of a state within its sphere, under its police power. Both are equally subject to the restraints of due process. It has been said that the power of the state to regulate business stems from its inherent police powers (*License Cases*, 5 How. 504, 583; *Nebbia* vs. *New York, supra*) and that while the Federal Government possesses no police power (*In Re Rahrer*, 140 U. S. 545, 555),

> "* * * it is none the less true"

as was said in *Hamilton* vs. *Kentucky Distilleries*, 251 U. S. 146,

> "that when the United States exerts any of the powers conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be attended by the same incidents which attend the exercise by a state of its police power, or that it may tend to accomplish a similar purpose."

See also: *Oklahoma City* vs. *Sanders*, Tenth Circuit, 94 Fed. (2d) 323, 327. The one is no greater than the other (*Hamilton vs. Kentucky Distilleries, supra*, pp. 156-157).

It logically follows, therefore, that any rule of restraint arising under the Fourteenth Amendment, affecting the states in their regulation of business, applies with equal

force to the interpretation of an act of Congress affecting interstate commerce under the Fifth Amendment (*Nebbia vs. New York, supra,* p. 525).

Moreover, if the interpretation placed on the statute by the Government would render the statute unconstitutional, then it should be given an interpretation, if possible, which would render it constitutional. *Reinecke* vs. *Northern Trust Company,* 278 U. S. 339; *Russian Volunteer Fleet* vs. *United States,* 282 U. S. 481; *Porter* vs. *Investors Syndicate,* 286 U. S. 461; *Interstate Commerce Commission* vs. *Oregon-Washington Railroad and Navigation Company,* 288 U. S. 14; *Anniston Manufacturing Company* vs. *Davis,* 301 U. S. 337.

Furthermore, it is the rule that an act of Congress must not only be given a construction under which it may be held constitutional, if possible, but it must be construed in a manner to avoid even any grave doubts as to its constitutionality. *Driscoll* vs. *Edison Light and Power Company,* 307 U. S. 104, 115; *United States* vs. *La Franca,* 282 U. S. 568, 574; *Thompson* vs. *Consolidated Gas Utilities Corporation,* 300 U. S. 55, 75, 76; *Richmond Company* vs. *United States,* 275 U. S. 331, 346; *Phelps* vs. *United States,* 274 U. S. 341; *Lucas* vs. *Alexander,* 279 U. S. 573, 577. It is also to be assumed that Congress was aware of the decisions of the Supreme Court and intended to legislate in harmony with those decisions. *Koenigsberger* vs. *Richmond Silver Mining Company,* 158 U. S. 41; *Blake* vs. *McKim,* 103 U. S. 336, 339; *District of Columbia* vs. *Murphy,* 314 U. S. 441.

The Interstate Commerce Act, as construed by the majority of the trial court to make of Appellant a common carrier subject to regulation under the Act and charged with the duties and burdens there imposed, has the effect to take Appellant's property in violation of the due process clause of the Fifth Amendment.

IV

The error of the District Court in dismissing Appellant's petition.

The foregoing argument demonstrates:

(1) that Appellant is not engaged in "transportation" within the meaning of that term as used in the Interstate Commerce Act;

(2) that Appellant is not a common carrier within the meaning of the term "common carrier" as used in the Interstate Commerce Act, nor within the common law meaning of that term;

(3) that Appellant is not a "statutory common carrier";

(4) that Appellant is not a "common carrier" in fact, in substance, or in form, within the decision in *The Pipe Line Cases*, nor is Appellant engaged in a pipe line operation within the reach of the statute within the decision in the *Valvoline Case;*

(5) that the operations of the pipe line do not bring Appellant within reach of the Interstate Commerce Act;

(6) that Appellant is not a "future pipe line" company in the sense in which that term was used in *The Pipe Line Cases;*

(7) that the public is without interest in Appellant's operations; and

(8) that the Interstate Commerce Act, as construed by the majority of the trial court to impose upon Appellant the status of a common carrier, is unconstitutional.

It follows that the action of the majority of the trial court in dismissing Appellant's petition was error.

WHEREFORE, it is respectfully submitted that the judgment of the trial court should be reversed and injunction should issue restraining enforcement of the order issued by the Interstate Commerce Commission against Appellant, all as prayed for in Appellant's amended petition; and Appellant now prays for the judgment of this Court accordingly.

Respectfully submitted,

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APPENDIX

Chap. 104—An Act to Regulate Commerce (24 Stat. 379), February 4, 1887.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States, through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be

reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

* * * * * * * *

Section 1 of Hepburn Amendment (34 Stat. 584), June 29, 1906

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be amended so as to read as follows:

Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this Act shall not

apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term 'common carrier' as used in this Act shall include express companies and sleeping car companies. The term 'railroad', as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

No common carrier subject to the provisions of this Act, shall, after January first, nineteen hundred and seven directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and

eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge and boards of managers of such Homes; to necessary care takers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, post-office inspectors, customs inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interest free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufac-

tured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor and the Commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

Section 1 of the 1920 Amendment to Interstate Commerce Act (41 Stat. 474-478), February 28, 1920

The first four paragraphs of section 1 of the Interstate Commerce Act, as such paragraphs appear in section 7 of the Commerce Court Act, are hereby amended to read as follows:

(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) The transmission of intelligence by wire or wireless;—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation or transmission takes place within the United States.

(2) The provisions of this Act shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid;

(b) To the transmission of intelligence by wire or wireless wholly within one State and not transmitted to or from a foreign country from or to any place in the United States as aforesaid; or

(c) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this act except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other

charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(3) The term 'common carrier' as used in this Act shall include all pipe-line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire. Wherever the word 'carrier' is used in this Act it shall be held to mean 'common carrier.' The term 'railroad' as used in this Act shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term 'transportation' as used in this Act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. The term 'transmission' as used in this Act shall include the transmission of intelligence through the application of electrical energy or other use of electricity, whether by means of wire, cable, radio apparatus, or other wire or wireless conductors or appliances, and all instrumentalities and facilities for and services in connection with the receipt, forwarding, and delivery of messages, communications, or other intelligence so transmitted, hereinafter also collectively called messages.

(4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property to provide and furnish such transportation

upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: Provided, That messages by wire or wireless subject to the provisions of this Act may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages: And provided further, That nothing in this Act shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers for the exchange of service.

(6) It is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and

delivery of property subject to the provisions of this Act which may be necessary of proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful.

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 21

CHAMPLIN REFINING COMPANY, *Appellant*,

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION.

REPLY BRIEF FOR CHAMPLIN REFINING COMPANY

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SUBJECT INDEX.

	Page
Reply to Government's Statement	1-7
Reply to Government's Summary of Argument	7-8
Reply to Government's Argument	8-29
Reply to the contention that	
(1) Under the very words of Section 1 of the Act, Appellant is a carrier subject to the provisions of the Act (Br. pp. 10-15)	9-12
Reply to the contention that	
(2) the legislative history of the Hepburn Act * * * leaves no doubt that Appellant's view that the statute applies only to those engaged in transportation "for others" * * * is an erroneous one (Br. pp. 16-18)	12-13
Reply to the contention that	
(3) Appellant falls within the rule of the Valvoline and not that of the Uncle Sam case (Br. pp. 18-28)	13-14
The Government's contention that the exception given the Uncle Sam Company exists only when a company is drawing oil from its own wells to its own refinery and for its own use	14
The Government's contention as to movement of products for sale to the public	15-17
The Government's contention that Appellant makes sales under contract	17-21
The Government's contention that Appellant uses a price formula which includes a "specific charge for transportation"	21-25
Reply to the contention that	
(4) Appellant cannot enjoy the benefits while disclaiming the burdens of common carrier status (Br. p. 28)	25-28

Page

Reply to the contention that

(5) the order violated no constitutional right of Appellant (Br. pp. 31-32) 28-29

Products pipe lines 29-34

Conclusion 35-41

TABLE OF CASES CITED.

Arkadelphia Milling Co. v. *St. Louis & Southwestern Railway Co.*, 249 U. S. 137 21

Atlantic Coast Line R. Co. v. *Standard Oil Co.*, 275 U. S. 257 ..... 18, 20, 21

Buck v. *Kuykendall*, 267 U. S. 307 28

Church of the Holy Trinity v. *United States*, 143 U. S. 457 30

General Oil Company v. *Crain*, 209 U. S. 211 21

Pennsylvania Railway Co. v. *Public Utilities Commission of Ohio*, 298 U. S. 170 ..... 16, 20, 21

Petroleum Rail Shippers Ass'n v. *Alton & Southern Railway*, 243 I.C.C. 589, No. 28106 33

Pierce Oil Corp. v. *Phoenix Refining Co.*, 259 U. S. 125 27

"Pipe Line Cases," 234 U. S. 548 ..... 9, 11, 12, 14

U. S. v. *California*, 297 U. S. 175 26

Valvoline Oil Company v. *United States, et al.*, 308 U. S. 141 ..... 9, 11, 13, 15

Walling v. *Jacksonville Paper Co.*, 317 U. S. 564 20

MISCELLANEOUS CITATIONS.

Boyd's: "Gasoline and What Everyone Should Know About It" 29

Technical Paper No. 516, U. S. Department of Commerce, 1932 ..... 32, 33

"Legal Aspects of Radio Communication and Broadcasting," 40 A. L. R. 1514 ..... 33, 34

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 75

CHAMPLIN REFINING COMPANY, *Appellant*,

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION.

REPLY BRIEF FOR CHAMPLIN REFINING COMPANY

Inasmuch as there appear to be in the brief of the Government,

First, statements of conclusions which are subject to inferences not supported by the record,

and,

Second, erroneous applications of the law to such conclusions,

the Appellant finds it necessary to file its reply to such brief.

For brevity in discussion, the titles and context of the Government's brief will be followed.

* * * *

STATEMENT.

(1) The statement (lines 7-12 incl., p. 3)

> "In lieu of compliance, Appellant filed a petition with the Commission, alleging that it was not a common carrier subject to the provisions of the Interstate Commerce Act and praying that the Commission so determine (R. p. 157)"

is not complete.

Appellant was compelled to file its petition to prevent the orders complained of becoming final and the prayer of its amended petition (R. Vol. I, p. 160) reads as follows:

> " * * * that:
>
> (a) This Commission revoke, rescind, and dismiss the orders of Ernest I. Lewis, Director, dated May 15, 1941;
>
> and further prays that:
>
> (b) The Commission proceed to determine,
>
> (1) That petitioner is not a common carrier,
>
> (2) That petitioner operates a private pipe line,
>
> (3) That petitioner is not a pipe line company, and
>
> (4) That petitioner is not engaged in transportation within the meaning of the Interstate Commerce Act;
>
> and finally prays that:
>
> (c) Petitioner be relieved of the requirement of filing valuation reports as directed by the orders of May 15, 1941, and

(d) That a final order be entered adjudging that petitioner be relieved of filing any report or reports for valuation or rate-making purposes."

(2) Exception is taken by the Appellant to the breadth of the statement made in note 2 at the bottom of page 4.

The Appellant does not question the findings of fact by the Commission, except the Commission's conclusion with relation to "differentials" which is interpreted by counsel for the Government to justify the contention that the "differential" is the application of "a distinct charge for transportation." (Govt. Br. pp. 8, 9, 24, 25.)

The Appellant has at all times contended otherwise as the record fully reveals.

To prevent repetition in discussion, an analysis of the "differential" question will be later made in connection with subsequent comment thereon by the Government.

(3) Reference is made to the statement in the last paragraph on page 4, that Appellant's "charter authorizes it to *transport** petroleum (R. 427)." The charter does *not* authorize it to do so as a common carrier.**

(4) Exception is taken to the innuendo of the statement, (top of page 5):

> "Besides *operating this pipe line*, Appellant is engaged in the refining, distribution, and sale of petroleum products in interstate commerce as an integrated oil company,"

which, if not so intended, is clearly misplaced emphasis.

Compared with its principal business of producing and

---

* Emphasis here and throughout this brief is supplied, unless otherwise indicated.

** It is of significance that notwithstanding the Interstate Commerce Commission argued in this Court (R. Vol. II, p. 829), in the *Uncle Sam Case*, that "its charter permits it to transport oil *as a common carrier*," such authorization did not preclude this Court from holding that company not to be a common carrier under the Act.

refining crude oil and marketing the products thereof, the pipe line operation is an incident (R. Vol. I, p. 167). The pipe line represents about one-eighth of Appellant's capital investment (R. Vol. II, p. 525).

(5) The statement at the beginning of paragraph 2, page 5, which reads as follows,

> "Appellant's pipe line is known as a 'products' pipe line, which is used for transportation of refined petroleum products only (R. p. 165)"

is in need of amplification and factual background, which will be considered in a discussion of its related phases in the Argument herein, *post*, pp. 29-34.

(6) The statement at the top of page 6, with reference to the source of the Champlin supply of "crude" oil for manufacturing purposes, should be amplified to state that all crude oil processed at the Enid refinery is produced in Oklahoma and that the Cimarron Valley Pipe Line Company does not cross any state line, but does all of its gathering wholly within the State of Oklahoma.

(7) The statement as to Cimarron's activities in instituting condemnation suits in Kansas, page 6, requires clarification.

The uncontradicted testimony of the witness, Leverton, (R. Vol. I, pp. 176-177) is quoted in this connection as follows:

> "50 Q. When did you first learn of the proposal to make the Cimarron Valley Pipe Line Company a common carrier in the operation of the products pipe line then in course of construction?
>
> "A. About April 15, 1935, when my attention was directed to correspondence concerning four condemnation suits which had been filed against seven persons in four counties in the State of Kansas.
>
> "51 Q. What did you do with regard to such proposal?

"A. I immediately directed Mr. Champlin's attention (fol. 282) to the complications that would arise in the operation of a products line, as a common carrier and recommended settlement at once with all persons involved in such litigation and the dismissal of such cases.

"52 Q. Now, please state what further steps were taken to avoid such responsibility.

"A. The condemnation suits that had been instituted were dismissed and *satisfactory* settlements were made with such land owners.

"Assignments of the rights-of-way from the Cimarron Pipe Line Company to Champlin Refining Company, conveying the entire right-of-way of such line were executed on June 10, 1935, and immediately recorded in the county seats of all counties in which such rights-of-way were granted.

"A bill of sale was at the same time executed by Cimarron Valley Pipe Line Company conveying all of its right, title and interest in and to said pipe line and its facilities to Champlin Refining Company, which was recorded in the office of the County Clerk of Garfield County, Oklahoma.

"The Champlin Refining Company, having advanced all funds necessary for the purchase of equipment and construction of the pipe line and its facilities, thereupon cancelled its charges against Cimarron Valley Pipe Line Company. The Champlin Refining Company took over the completion of the pipe line system and operated it *from the first day of its use*. When the licenses that had (fol. 283) been granted to Cimarron Valley Pipe Line Company in Kansas and in Nebraska expired in 1936, that corporation withdrew from both states."

(8) Reference is made, page 7, to the new permit for construction issued by the State of Iowa (R. p. 483) concerning which it is said, that:

"The new permit, however, still contained provisions authorizing the company to use the property of others. (R. 485.)"

We do not so interpret the permit.

The new or amended Iowa permit only authorized Appellant to exercise the common right to use the public highways, with consent of the proper public officials, and to acquire property rights from private owners; but it expressly withheld the power of eminent domain (R. Vol. II, pp. 484-485). The record affirmatively shows that Appellant obtained from the proper officials of Iowa, consent to cross public highways (R. Vol. II, pp. 473-475, 476-478). Like permission was obtained in all other states (R. Vol. I, pp. 434-442, Vol. II, pp. 443-473), for the entire right-of-way used.

(9) The unsoundness of the statement at the top of page 8, that,

> "This 'differential' is an amount equal to the through rail rate from Enid to purchaser's destination, minus the charges paid out by the purchaser for short haul transportation from Appellant's pipe line terminal to destination, (R. 253-255),"

and of the statement at page 24, that,

> "Since the product transported and sold by appellant is identical, insofar as its nature or processing is concerned, at both ends of the pipe line, this difference in value or market price at origin and at destination is attributable entirely to transportation, and is in fact calculated in terms of rail freight rates. It is idle for appellant, which furnishes part of such transportation and collects a specific charge therefor, to contend that this amount paid by the purchaser is not a charge made for transportation and not one which operates to compensate it for transporting the product from Enid through the pipe line to the respective terminals."

and of the conclusion of the Commission quoted at the top of page 25, that,

> "'The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the

> pipe line terminal' (R. 59), and that 'Champlin is willing to sell its products to any part of the consuming public that can avail itself of the Champlin's facilities, provided the purchaser will agree to pay to the Champlin, under contract or spot sales, the so-called differential as compensation to the Champlin for transporting the product from Enid through the pipe line to the respective terminals,' such differential being added to the Enid price of the product 'in the sale of all products transported through the pipe line' (R. 66),"

will be demonstrated in our Argument, *post*, pp. 21-25.

SUMMARY OF ARGUMENT.

Appellant does not question the Government's right to summarize its argument as it deems proper. However, the assumption, p. 9,

> "That appellant makes a *distinct charge* for transportation by way of the pipe line is striking evidence that, in substance, it is serving the public just as much as if title to the *petroleum* vested in the purchaser before passage through the pipe line,"

is foreign to the facts which are indisputably shown in the record.

The Appellant does not make a "distinct charge for transportation," nor does it haul "petroleum" in its products pipe line.

With regard to II of the Summary of Argument, page 9, Appellant says that the definite purpose of the Commission is to compel the Appellant to publish tariffs and assume the obligations of a common carrier.

The filing of a report is merely the first step incidental to such final action.

The Appellant sought to show by the witness, J. J. Dunlevy, R. Vol. I, p. 133, (the manager of the Valvoline Pipe Lines Department) the circumstances under which Valvoline was required to file tariffs and become a common carrier.

Valvoline had received a letter dated October 11, 1941, from Thurman Arnold, Attorney for the Department of Justice, which Appellant was not permitted to introduce in evidence (R. Vol. I, p. 132), after the receipt of which Valvoline filed its tariffs.

Upon cross examination, the witness stated that,

> "we were required by Thurman Arnold to file tariffs * * * ," (R. Vol. I, p. 133.)

The matter was quite important with the Valvoline Company, inasmuch as it required a year's time and the approximate expenditure of $25,000.00 (R. Vol. I, p. 131) to prepare the required report data and so it will be, in the event of an adverse decision, with this Appellant.

In the *Valvoline* case this Court assumed that no detriment would result to that company by compliance with the valuation orders, and that Valvoline's constitutional rights would not be thereby impaired. Subsequent developments have proved otherwise. It now appears that compliance with those orders was but the initial step in compelling Valvoline to assume common carrier obligations; and its losses in time and money constituted in themselves a very real deprivation. Appellant therefore solemnly protests against its constitutional rights being adjudicated upon the assumption that no deprivation of its property will result from the filing of such report.

ARGUMENT.

The Government's brief narrows the issues. It presents the contentions:

> (1) under the very words of Section 1 of the Act, Appellant is a carrier subject to the provisions of the Act (Br. pp. 10-15);
>
> (2) the legislative history of the Hepburn Act * * * leaves no doubt that Appellant's view that the statute applies only to those engaged in transportation "for others" * * * is an erroneous one (Br. pp. 16-18);

(3) Appellant falls within the rule of the *Valvoline* and not that of the *Uncle Sam* case (Br. pp. 18-28);

(4) Appellant cannot enjoy the benefits but (*sic*) disclaim the burdens of common carrier status (Br. pp. 28-30); and,

(5) the order violated no constitutional right of Appellant (Br. pp. 31-32).

Reply to the contention that

(1) Under the very words of Section 1 of the Act, Appellant is a carrier subject to the provisions of the Act (Br. pp. 10-15).

The contention that the very words of Section 1 of the Act make Appellant a "common carrier," is founded on the fact that subsection (3) of Section 1, defines the term "common carriers" to include "all pipe line companies." Without attempting to determine the sense in which the latter term was used, the Government asserts that Appellant is a pipe line company, and, on the basis of that assertion, draws the deduction that Appellant is a "common carrier" subject to the Act. This assertion ignores the equally important requirement of the Act that Appellant must also be engaged in "transportation" as that term is used in the Act.

The Government presented the same contention in the *Valvoline* case (R. Vol. II, pp. 899-900, 905), but the case was not decided on that basis, for Mr. Justice Reed there said,

> "* * * it is the purchase from many sources and subsequent carriage that determines the applicability of the statute to Valvoline."

In the *Pipe Line Cases*, the Government contended that the Act made all interstate oil-carrying pipe lines common carriers (234 U. S. 549; R. Vol. II, p. 712). The holding

that the Uncle Sam Oil Company was not under the Act was a rejection of this contention.

Relying upon the statutory definition of "common carrier," the Government quotes from the *Valvoline* case the reference to such definition. This portion of the opinion reads in its entirety as follows:

> "There is no controversy over whether appellant is an interstate pipe line company. Obviously it is. The contentions above are advanced to show it is not subject to the Act. Section 1 (3) defines common carrier to include 'all pipe-line companies.' If this definition is not limited by the subsequent clause 'engaged . . . as common carriers for hire,' extended consideration of these characteristics of a private carrier is unnecessary as the language of the definition is decisive."

The Government treats this statement as a holding that any company which owns an oil-carrying pipe line that crosses state lines is a common carrier under the Act, without regard to the use to which the pipe line is devoted. This view ignores the basis upon which the *Valvoline* case was decided.

In this part of the Valvoline opinion, the Court obviously had in mind pipe line companies that engaged in "transportation" within the meaning of the Act. This is clear from the balance of the opinion. Following the quoted part of the opinion, reference was made to the *Pipe Line Cases*, including the holding that the Hepburn Amendment was designed "to cover those who were common carriers in substance, even if not in technical form." Then after stating that the Court did not perceive any change in meaning between the Hepburn Amendment and the Amendment of 1920, and after directing attention to the fact that the operation of the Uncle Sam Oil Company "was held not to be transportation under the Act," the issue of whether or not Valvoline was subject to the Act was determined by the holding that "it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline."

Valvoline, therefore, was not held to be subject to the Act because it was a pipe line company, but because it was a carrier engaged in "transportation" of a character that came within the meaning of that term as used in the Act. The case, therefore, is not authority that any company which owns an interstate oil-carrying pipe line is a common carrier under the Act. Before a pipe line owner may become subject to the Act, the pipe line must be devoted by its owner to the type of transportation at which the Act was directed—transportation for others, for only in that type of transportation could there be an opportunity for any of the abuses which the Act was designed to correct. It is not necessary that the line be a common carrier in form; it is necessary, however, that it carry for others and it is significant that in the cases in which this Court has held the Act applicable the carrier involved was actually a common carrier in fact, although not necessarily a common carrier in form.

The issue of Valvoline's being under the Act was settled upon the same principle upon which the Court had in the *Pipe Line Cases* held that the Standard Oil Company and its affiliates were subject to the Act. The fact that there was "no controversy over whether Appellant (Valvoline) is an interstate pipe line company," was not determinative of the case. To come within the Act, there had to be, first, a pipe line company and, second, a pipe line company engaged in "transportation" within the meaning of the Act. To be "transportation" within the meaning of the Act, it had to be the type of carriage at which the Act was directed. Valvoline served 9020 wells owned by many persons (R. Vol. II, p. 940) in three states. The producers in the oil field had a commodity to be moved. Valvoline contended in its brief that the trunk line common carriers could not afford to connect with these 9020 small wells (R. Vol. II, p. 946), and that it was supplying the sole practical means of transportation to these producers. The transfer of title did not affect the basic facts. The purchase from

so many producers and subsequent interstate carriage brought Valvoline within the Act.

The purpose of the Act was to prevent unreasonable charges, rebates, discriminations and other abuses by those engaged in "transportation"—abuses by carriers against shippers and passengers. If any language of the Act were construed to bring within the terms of the Act any person who does not sustain to others the relation of carrier to shipper or carrier to passenger, such language would be out of harmony with the purpose of the Act.

In support of its contentions that Section 1 brings all pipe line companies within the Act, the Government quotes from the *Pipe Line Cases*, the statement that "The provisions of the Act are to apply to any person engaged in the transportation of oil by means of pipe lines." An effort is made to apply the sentence [illegible]. The sentence cannot be applied as though [illegible] in a vacuum. It must be read as part of an opinion which held that the Uncle Sam Company was not within the Act though engaged in moving oil from one state to another by means of pipe line. In the quoted sentence the Court patently used the word "transportation" in the sense in which it is used in the Act, and evidently had that meaning in mind when it said that the Uncle Sam Company operations were not "within the description of the Act."

Reply to the contention that

(2) the legislative history of the Hepburn Act * * * leaves no doubt that Appellant's view that the statute applies only to those engaged in transportation "for others" * * * is an erroneous one (Br. pp. 16-18)

The Government does not attempt to answer Appellant's argument (Appellant's Br. pp. 9-25) that the coverage of the Act is limited to transportation for others. The Government's argument (Br. p. 16) that the Act should not be so limited, is restricted to excerpts from the Congressional debates.

Material can be found in these debates to support the view that the Act represents an attempt to reach all interstate oil-carrying pipe lines, private and public alike, and to support a contrary view. Whatever deductions may be drawn from these debates, it appears that the Senator in charge of the measure seemed to have some doubt as to the meaning of the language in which the pipe line clause was cast and foresaw the necessity for judicial construction (Br. 18). That necessity came and the clause has been construed by this Court, but never to include any except those who were common carriers in fact. The Court has twice in the past been asked to construe it as the Government now urges that it should be construed, and has twice rejected the requested construction. No doubt in each of those instances the Court had in mind, as the Court must now have in mind, the clash that would come between the Fifth Amendment and the Act if the latter were given the meaning contended for by the Government. It is clear from the Chief Justice's concurring opinion in the *Pipe Line Cases* that the question of the validity of the Act, if construed as the Government now urges, was considered by at least one member of the Court; and the mention of that subject in his concurring opinion suggests, if it does not reveal, that the exclusion of the Uncle Sam Oil Company was necessary to save the pipe line clause as valid legislation.

Reply to the contention that

(3) Appellant falls within the rule of the Valvoline and not that of the Uncle Sam case (Br. pp. 18-28)

In an attempt to avoid the force of the holding as to the Uncle Sam operations, the Government asserts that it does not apply to Appellant,

(1) because "the exception exists only when a company is drawing oil from its own wells, to its own refinery, and for its own use," (Br. 20);

(2) because Appellant moves its products for sale to the public, (Br. 20-24);

(3) because Appellant makes sales under contract, (Br. 22); and

(4) because Appellant uses a price formula which includes a "specific charge for transportation," (Br. 8, 24-25).

The Government's contention that the exception given the Uncle Sam Company exists only when a company is drawing oil from its own wells to its own refinery and for its own use.

The argument, that the holding as to the Uncle Sam Company applies only when the oil is moved from the pipe line owner's wells to the pipe line owner's refinery, misses the basis and reason for the holding. The Act is directed at transportation for others, and the Uncle Sam Oil Company operations were not within the Act because they were not the type of "transportation" at which the Act was directed, and the principle is not confined to an owner's moving his oil from his wells to his refinery. In logic and in reason the principle applies as well to an owner's moving his gasoline from his refinery to his storage tanks as it does to an owner's moving his oil from his wells to his refinery. All gasoline is now manufactured for use and for sale. Suppose the refinery is in one state and the storage tanks are three miles distant, but in another state. It would appear foolish to contend that the movement of the gasoline by private pipe line from the refinery to storage would be under the Act. Distance of interstate movement cannot be made the criterion for determining that the movement is or is not covered by the Act. Whether the movement is or is not transportation for others is the only criterion for determining the applicability of the Act to any such interstate movement of oil by pipe line. When that criterion is put out of sight, the Act becomes a confused piece of legislation which cannot be applied with proper observance of the limitations of the Fifth Amendment.

The Government's contention as to movement of products for sale to the public.

The fact that Appellant uses its pipe line for the purpose of reaching markets with its products does not determine the applicability of the Act to Appellant's pipe line operations. In the *Valvoline* case (308 U. S. 144-145), in speaking of the operations of Standard Oil Company and its affiliates involved in the *Pipe Line Cases*, the Court said:

> "Whether the oil so owned and transported was ultimately used by the carrier in its own operations or sold to others, was in this connection immaterial."

The Uncle Sam Company like the Standard Oil Company and its affiliates and Valvoline was engaged in manufacturing petroleum products and selling them in states other than the state in which the manufacturing or refining processes were conducted. (R. Vol. II, p. 829.) The Standard Company and Valvoline each sold some of the oil transported before it was refined. The operations of the Standard companies and Valvoline were within the Act; the operations of the Uncle Sam Oil Company were not within the Act. The former companies were carrying everybody's oil to market; the Uncle Sam Company was moving only its own oil. In no instance was the purpose of the transportation or the use made of the oil or the fact that the ultimate purpose was a sale, considered material in determining the applicability of the Act.

Standard and Valvoline were affording to many a means of moving their oil, but a sale of the oil to them was necessary to obtain the benefit of the means of movement. The material difference between the Uncle Sam operations and those of Valvoline and Standard was that the Uncle Sam pipe line was not a means by which the oil of other persons moved to a use and markets. In neither case was the "end use" of the oil material in determining the applicability of the Act. In the *Pipe Line Cases*, Mr. Justice Holmes said that the transportation involved in the Uncle Sam op-

erations was "merely an incident to use at the end." In the *Valvoline* case, Mr. Justice Reed, in distinguishing the facts of that case from the facts of the *Uncle Sam* case referred to the part of the opinion in which the quoted expression appears, but in that connection only said that the Uncle Sam Company's line was used for the sole purpose of moving the company's oil from its wells to its refinery. He did not state that the movement was "merely an incident to use at the end." The omission is significant. The absence in the facts of the *Uncle Sam* case of any element of transportation for others, was alone deemed sufficient to justify the holding as to the Uncle Sam Company and to distinguish that case from the facts of the *Valvoline* case. Likewise the fact that Appellant's pipe line is used to move only products refined by it, is sufficient to distinguish this case from the facts of the *Valvoline* case and to bring this case within the rule applied in the *Uncle Sam Company* case.

The Government's contention, that the fact that a commodity is moved by private means for the purpose of sale controls the question as to whether or not the means of accomplishing movement is within the reach of the Act, is abundantly contradicted by the opinion in *Pennsylvania Railway Co. v. Public Utilities Commission of Ohio*, 298 U. S. 170. There Pittsburgh Coal Company by its private barges and railroad moved coal to its cleaning and sizing plant in another state. The purpose of the movement was to reach markets for the coal. The railroad company contended that the movement was with a continuing intention to deliver the coal to customers in other states and that the movement impelled by that intention was interstate commerce. In that case this Court, speaking through Mr. Justice Cardozo, said that the question before the Court was whether the particular business there involved was subject to regulation under the Interstate Commerce Act, and that the movement from Pennsylvania to the cleaning and sizing plant in Ohio was by private carrier. Although the movement was for the ultimate purpose of sale, Pittsburgh Coal Company was not a common carrier under the Act.

The test of whether or not movement of a commodity is within the coverage of the Interstate Commerce Act is not to be determined by whether or not the commodity is being moved for the purpose of sale, but by whether or not there exists between the one operating the means of accomplishing the movement and the owner of the property the relation of carrier and shipper.

What is said in (3) *infra*, applies with equal force and propriety upon the foregoing discussion.

The Government's contention that Appellant makes sales under contract.

The Government fails to apprehend the basis of the holding that Valvoline was under the Act, while the Uncle Sam Oil Company was not. Failing there, the Government fails to see the analogy between the facts of this case and the facts of the *Uncle Sam* case; and that failure induces the supposition that because Valvoline was subject to the Act Appellant must also be subject, and that Appellant's case is not ruled by the *Uncle Sam* case.

In an attempt to distinguish the facts of this case from the facts of the *Uncle Sam* case, attention is drawn to the fact that Appellant makes "contract" sales of petroleum products. In this connection the statement is made that in such "contract" sales the destination of the products is known before the movement by pipe line. The record shows that Appellant has contracts with a few purchasers for relatively small quantities of products, but careful study of the record fails to disclose any basis for an inference that Appellant knows, before the pipe line movement begins, the destination of any part of its products. Immediately after stating that the ultimate destination is known in the case of "contract" sales, the Government states, (Br. p. 22),

> "In the case of other sales, the petroleum products are shipped in response to a substantial and continuing demand, of such magnitude that at its peak it exceeds

> the capacity of the pipe line for contemporaneous delivery and requires the accumulation in storage of products shipped in advance and held in readiness to fill orders. (R. pp. 207-208, 210.)"

This statement negatives the former statement that in the case of "contract" sales, the destination of the products is known prior to the movement by pipe line. The facts are that the pipe line is so small that its capacity is not sufficient to transport from day to day, quantities adequate to supply the business which Appellant has built up (however, only 3½ per cent of the total sales in the area where Appellant sells its products), and it is necessary in the off seasons to build up storage at the terminals to supply this business in the peak season of consumption, and to continue during the peak seasons to operate the pipe line (R. Vol. I, p. 208). It being necessary to so accumulate in off seasons supplies for sales during the peak seasons, it cannot be known from which particular movement deliveries will be made on any "contract" sale.

The situation in respect to Appellant's "contract" sales has a similarity to one involved in *Atlantic Coast Line R. Co.* v. *Standard Oil Co.*, 275 U. S. 257. Standard Oil Company was buying petroleum and petroleum products from others. The sellers shipped their commodities by tankers to Standard from Tampico and Baton Rouge. Delivery was made to Standard in Florida and the commodities came to rest in bulk in Standard's storage tanks in that state. Later these commodities were sold by Standard and delivered to others in the State of Florida by tank car to bulk stations and by tank wagon to drive-in stations. The rail shipments were made by common carrier railroads to destination in Florida. The railroads contended that the interstate, and not the intrastate, rates should apply to these local shipments from storage to destinations in Florida. This Court held otherwise. The sale and delivery were made in Florida. The commodities having come to rest in Standard's storage tanks, the shipment was not in-

terstate transportation. The sale was not even interstate commerce or interstate commerce under the Interstate Commerce Act. Standard made "contract" sales like Appellant. These had to do with fuel oil. Of them the Court said:

> "Approximately 95 per cent of the fuel oil sold by plaintiff in Florida is on contracts made before the oil has been shipped from the point of origin to plaintiff at Port Tampa and Jacksonville. Most of these are for a period of a year, covering the requirements of the various consumers, with average monthly deliveries stipulated, although in actual practice shipments from the storage tanks to the consumers are accommodated to their needs as under requirement contracts. There is no separation of the fuel oil under contract from that not under contract, all being of the same grade. At the time the shipment of the fuel oil is made from the point of origin, plaintiff cannot say where any particular cargo of same, or any part thereof, will go after it has been pumped into the storage tanks, to whom it will go, or when it will be shipped. At the time of shipment from the point of origin, the only destinations which can be given are Port Tampa and Jacksonville, respectively. (275 U. S. 265.)
>
> "The fuel oil is not different from the other kinds. While the fuel oil is purchased by the plaintiff from a selling company, which has a year's contract, the seller delivers it from Tampico, at the Florida seaboard, as it is likely to be needed to meet the obligations of a number of yearly contracts made by the plaintiff for its delivery in certain parts of Florida. No oil which comes in is labeled or identified in any particular way with any particular company, except after it is shipped to that company from Tampa or Jacksonville. There is no passage of title from plaintiff to the contract purchasers and there is no setting apart of particular oil until the shipments are made at the end of this interval of weeks and months in accordance with the needs of those who have contracted to buy it." (275 U. S. 271)

In contending that the movement "by pipe line for the purposes of distribution in such commerce must be re-

garded as a part of the through movement in interstate commerce beginning at the refinery and ending at the purchaser's place of business" (Br. p. 22), the Government cites *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564. The case was decided under the Fair Labor Standards Act, and not under the Interstate Commerce Act. If the contention were correct, then a shipment by common carrier railroad from Appellant's storage tanks to a purchaser's place of business in the same state would take an interstate rate. The fact that it would not take such rate (*Pennsylvania R. Co.* v. *Public Utilities Commission of Ohio*, 298 U. S. 170; *Atlantic Coast Line R. Co.* v. *Standard Oil Co.*, 275 U. S. 257) is conclusive of the error of the Government's contention and demonstrates that such a sale is not in interstate commence. When Appellant makes a sale and delivery at its storage tanks, the purchaser then becomes the shipper.

The Government further asserts that there is a continuous movement of products from Appellant's refinery to the ultimate destination at the purchaser's place of business, and upon the basis of that assertion argues that Appellant is subject to the Act. The record shows without dispute that Appellant retains title to all products until they come to rest in the storage tanks at the three pipe line terminals; that no products are earmarked for any purchaser. When the products reach the end of the pipe line, they come to rest in bulk storage and in off seasons quantities are there accumulated to supply demands in peak seasons of consumption. Movement in so far as Appellant's pipe line is concerned ends with the products in bulk storage. All sales and deliveries are made from such bulk storage. When a purchaser buys products from storage and ships therefrom to his place of business, he becomes the shipper and sustains to the carrier chosen by him the relation of shipper to carrier. The operation cannot "be regarded as a part of through movement in interstate commerce beginning at the refinery and ending at the purchaser's place of business," as contended by the Government at page 22 of its

brief. (*Atlantic Coast Line* v. *Standard Oil Co.*, 275 U. S. 257; *Pennsylvania Railway Co.* v. *Public Utilities Commission of Ohio*, 298 U. S. 170; *Arkadelphia Milling Co.* v. *St. Louis & Southwestern Railway Co.*, 249 U. S. 137; *General Oil Company* v. *Crain*, 209 U. S. 211.)

The Government's contention that Appellant uses a price formula which includes a "specific charge for transportation."

As heretofore developed, Appellant moves Appellant-owned and controlled products, all of which are refined at its Enid refinery, by its pipe line originating at such refinery to Appellant-owned and controlled storage at its pipe line terminals. Appellant at all such times has full title to and control of these petroleum products. No part of these products is earmarked or committed for sale or delivery to a particular customer. (R. Vol. I, pp. 207, 209-210, 249)

The bulk of the sales and deliveries made by Appellant out of its storage terminals are to jobbers and other dealers. (R. Vol. I, p. 250) These purchasers furnish the transportation facilities for the movement of such products from the terminal points to their places of business. (R. Vol. I, pp. 206, 251, 258) Only on this type of sale is a "differential" involved. The f. o. b. terminal (delivered) price at which these products are sold, consists of two constituent elements:

(1) An Enid price based on certain market quotations in the Chicago Journal of Commerce, and

(2) A charge, which for lack of a better term, is called a "differential," the sole objective of which is to fix a price to individual jobbers which will permit them to compete in the market, not at the terminal point, but at their places of business. Consequently, this "differential" is not uniform in amount as to each purchaser at the same terminal. It varies in amount, depending on each jobber's competitive situation at

his place of business. (R. Vol. I, pp. 212, 215, 217, 256, 258)

The Government contends (Br. pp. 24-25) that through this differential Appellant collects from its jobbers and dealers at its pipe line terminals, a specific charge for the transportation of its products by its pipe line from its Enid refinery to these terminal points. This contention is based on the conclusion in the Commission's Report on Reargument (R. 59) that:

> "The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe line terminal."

The only evidence as to the purpose, method of calculation, and effect of this differential is the testimony of the witness Snyder (Appellant's vice-president in charge of marketing) and certain exhibits introduced in conjunction with his testimony. (R. Vol. I, pp. 212-225, 247-262) The evidence not only fails to support but directly refutes the Commission's conclusion upon the legal effect of this testimony.

To understand Appellant's pricing formula, it is necessary to understand the general price structure which prevailed in the markets in which Appellant was doing business. Some competitors were selling in these markets on a "basing point" price system, the objective of which was to reach a delivered price destination based on a quoted price at the basing point (Group 3, Oklahoma) plus "phantom" or rail freight from Group 3 to the point of destination, the products not moving by rail from Group 3 to destination, but actually moving from refineries and terminals located outside of Group 3. As deliveries were made f.o.b. company refinery or terminal, the jobber was credited with freight from actual point of shipment to destination as the jobber would have to pay this freight on acceptance of delivery at destination. (R. Vol. I, pp. 219-225) Other local

refiners were selling f.o.b. refinery without any transportational calculation entering into their f.o.b. refinery price.

Faced with this competition, Appellant evolved a pricing formula based on which it could sell to individual jobbers at an f.o.b. terminal (delivered) price which would permit each such jobber to meet competition at his place of business. In this formula, the basic Enid price was static, while the differential was flexible so as to attain the objective of reaching a delivered price which would be competitive. (R. Vol. I, p. 212)

At its Hutchinson, Kansas terminal, Appellant was faced with direct competition from local refiners. It originally set arbitrary "differential" for sales at Hutchinson at ⅜ cent per gallon for deliveries to Kansas jobbers and ¼ cent per gallon for deliveries to Colorado and Missouri jobbers. Competition from local refiners required a reduction of the differential for Kansas jobbers to ¼ cent per gallon and the complete elimination of the differential for Missouri and Colorado jobbers. (R. Vol. I, p. 212)

At its Superior, Nebraska terminal on deliveries to Nebraska jobbers and at its Rock Rapids, Iowa, terminal, Appellant in effect followed the competitive "basing point" practice by setting its differential at the difference between established rail rates from Oklahoma to points in Nebraska and the newly-established rail rates from Superior to such Nebraska points. As the Court well knows, a "basing point" price is a delivered price and is not based on a specific transportational charge. As established rail rates were not available from the Superior terminal to points in Colorado, Wyoming and the Dakotas, a differential was adopted arbitrarily at ½ cent per gallon for deliveries to jobbers located in these states, along with Iowa. (R. Vol. I, pp. 212-215)

These differentials were adjusted from time to time as competitive conditions changed. (R. Vol. I, pp. 212-215)

To contend that these differentials represent a charge to others for the transportation of products by pipe line is obviously fallacious, because:

(1) They were never identified as charges for transportation. (See invoices, R. Vol. I, pp. 392-399)

(2) No showing was made that they in any way reflected or bore any relationship to the actual cost of transportation. In fact, they were arbitrarily directed at reaching a competitive price.

(3) They were not uniform in amount as to purchasers accepting deliveries at the same terminal. At Hutchinson, for example, Missouri and Colorado jobbers paid *no* differential; Kansas jobbers paid a differential of ¼ cent per gallon. At the other terminals, similar variances existed depending on the individual competitive situation of the jobber at his place of business. How can it reasonably be contended that these differentials were intended to be or are in effect charges for transportation, where there is no uniformity in amount for the same movement between the same points?

(4) It is true that certain established rail rates were on some deliveries considered in fixing these differentials. The basic rail rate so considered was the established rail rate from Group 3 to the location of the jobber's business. No products moved, either by rail or by pipe line, between Group 3 and the jobber's business location. Such rail rates were used merely as a basis for calculating a delivered price, not as a charge for transportation.

(5) It is true that the cost of moving its petroleum products to the terminal points was undoubtedly considered by Champlin in arriving at its ultimate f.o.b. (delivered) terminal prices. But to say that this ultimate delivered price or its constituent elements represents a specific charge for transportation, is no more sound than to say it represents a specific charge for producing the crude which went into the refined products, a specific charge for refining, a specific charge for marketing, and a specific charge for the other elements of cost which go into the final cost of Champlin's finished products.

Snyder's testimony and the exhibits introduced in connection therewith are clear. No conflicting evidence was

offered or introduced. It demonstrates that the purpose, method of calculation and effect of these differentials were to reach an f.o.b. (delivered) terminal price to jobbers and dealers which would permit them to be competitive. It did not involve a charge for transportation, either specifically or as a concealed constituent element in this delivered price.

The Government's contention that Appellant cannot enjoy the benefits while disclaiming the burdens of common carrier status. (Br. 28)

The assertion that Appellant having enjoyed some of the rights and privileges of a common carrier cannot complain of the attendant burdens is founded primarily on the facts that,

(1) construction of the pipe line was commenced by Cimarron Valley Pipe Line Company, a common carrier, which had the right to exercise the power of eminent domain;

(2) Cimarron filed four condemnation proceedings (which were dismissed and satisfactory and complete settlements made with the land owners before the line was completed, so that all right-of-way was acquired by purchase); and,

(3) one of the Iowa permits authorized Appellant to exercise the power of eminent domain.

A short answer to the entire contention is that none of the rights or privileges of a common carrier have been exercised by Appellant.

At the outset of our response to this argument, we refer the Court to the finding of the Commission that the right-of-way was acquired by purchase and that Appellant never assumed or exercised the power of eminent domain. (R. Vol. I, p. 60.)

In the Argument, the Government speaks (Br. p. 28) of Cimarron Valley Pipe Line Company as Appellant's *alter ego*. There is no basis in the record for the assumption that the separate identity of the two corporate entities was not,

or is not, preserved in all of their dealings. Cimarron did file certain condemnation suits. They were not prosecuted to conclusion nor was a taking effected by them. No property was acquired in any state by condemnation proceeding. The four proceedings commenced by Cimarron in Kansas were dismissed before awards were made and "*satisfactory* and *complete* settlement was made with all of the contesting land owners" (R. Vol. I, p. 200), and the innuendo appearing in the Government's brief (p. 29-30) is unjustified. Further, only the land owners could complain if they were overreached in acquiring the rights of easement. The Government is without interest or jurisdiction in these purely intrastate proceedings.

One of the Iowa permits issued to Appellant did provide for the exercise of the power of eminent domain (R. Vol. II, p. 829), but the power was never exercised. The permit was surrendered and a new permit was issued, expressly excluding the power of eminent domain. The Government argues that since the first permit authorized the exercise of the power of eminent domain (although the power was never exercised), the Court is justified in holding that Appellant is a common carrier engaged in transportation under the Act.

The charter of the Uncle Sam Company authorized it to act as a common carrier, which would include the right to exercise the power of eminent domain, but that fact evidently was not regarded by this Court as sufficient basis to hold that company a common carrier under the Act. Actions, not powers, are the important factors in what determines a common carrier in fact.

This Court has held that,

> "Whether a transportation agency is a common carrier depends not upon its corporate charter or declared purpose, but upon what it does." *U. S.* v. *California*, 297 U. S. 175.

The argument was made in the *Pipe Line Cases, supra*, that the Uncle Sam Company should be required to assume

the burdens of a common carrier, because it had laid its line over Indian lands under regulations prescribed by the Secretary of the Interior, providing that every pipe line so laid should be required to become a common carrier. (R. Vol. II, p. 711.) But this court rejected such argument and held that the Uncle Sam Company was not subject to the Act because it was not a common carrier in fact.

The Government also asserts that the new or amended Iowa permit authorizes Appellant to use the property of others, and thereon argues that the burdens of a common carrier may properly be imposed upon Appellant. The facts are that this permit does authorize Appellant to cross public highways, with consent of the proper public officials, to cross railroads and to acquire property rights from others, but it expressly withholds the power of eminent domain. The authority so granted can be exercised only by consent of those in control of the highways and by private agreement with railroads and other owners of private property. The authority so granted has been exercised only in strict conformity to the terms of the permit. Neither the type of permit nor what has been done under it has ever been held a basis for determining a holder to be a common carrier or for imposing the burdens of such a carrier.

At another place in its brief the Government directs attention to the fact that the purpose clause of Appellant's charter includes the power to "transport petroleum," as if the existence of this power were a basis for holding Appellant subject to the Act. The Uncle Sam Company had the broader power to act as a common carrier. It did not, however, act as a common carrier or as a carrier for others; and notwithstanding its corporate character, its charter power and its operation of an interstate oil-carrying pipe line, it was held not to be within the reach of the Act.

In support of its contention that the burdens of a common carrier are attendant upon the assumption of the benefits of a common carrier, the Government cites the case of *Pierce Oil Corp.* v. *Phoenix Refining Co.*, 259 U. S. 125, which held

that the State of Oklahoma could compel Pierce Oil Corporation to become an *intrastate* common carrier because it had *accepted* the benefits conferred by the state laws, and had entered the state under a statute *requiring it to become a common carrier.* The issue of whether Pierce Oil Corporation was thereby made an *interstate* carrier was not, and obviously could not be, an issue in the case. That is a subject of Federal jurisdiction solely. Here no benefits have been conferred upon Appellant by the Federal Government, hence there are no corresponding obligations. (*Buck* v. *Kuykendall*, 267 U. S. 307.) The mere fact that a company is an intrastate carrier does not make it an interstate carrier. The latter status is impressed only when the company is an interstate common carrier *in fact.*

The fact that Champlin's wholly-owned subsidiary, Cimarron Valley Pipe Line Company, originally secured a certificate of authority and convenience "to transact the business of a common carrier in the *State of Kansas*" has no bearing on Champlin's status except that its withdrawal therefrom with express authority of the State of Kansas (R. Vol. I, p. 433) and its transfer to Champlin of the pipe line and all appurtenances (R. Vol. I, p. 280A) before completion of the line made it abundantly clear that the line was to be operated as a private line.

The Government's contention that the order violated no constitutional right of Appellant.

Appellant directs attention to its brief, pp. 40-60, upon this question and in addition desires to make the following further statement with regard to the Government's contention, (Br. pp. 31-32).

Reliance is placed by the Government upon the Valvoline case as an answer to all questions affecting the constitutionality of the Act as it has been applied by the trial court, and as the Government would have this Court apply it. *Valvoline* was held to be a common carrier because it carried for others and thereupon this Court found that the

power of the Commission to require valuation data under Section 19a did not present any serious question of constitutional invasion. As presented in this case the constitutional question runs deeper. Here there is no carriage for others and Appellant contends that an attempt to subject it to any of the provisions of an act which does not apply to its operations, would be unreasonable and arbitrary. The requirements of due process are not met in such attempt. In such case, the violation of due process is substantive and not procedural and to attempt to enforce compliance with a regulation based on a statute to which Appellant is not subject, raises in itself the issue of due process.

Products pipe lines.

Appellant deems it necessary to give affirmative consideration to products pipe lines which are to be distinguished from "crude" oil pipe lines, inasmuch as the development of their use long followed the adoption of the Hepburn and the 1920 Amendments, and could not have been in contemplation by Congress at the time of the enactment of such amendments. The factual background of such pipe lines is important,

> First, as to the development of gasoline manufacture which represents a transition from nuisance to necessity, and
>
> Second, as to the change, about 1930, in the state of the art of pipe line construction, which enabled the refiner to utilize the welded seamless steel pipe line as an economical and satisfactory means for the transportation of gasoline.

In Boyd's "Gasoline and What Everyone Should Know About It" it is said, at pages 9 and 10, that:

> "* * * there was such an excess of gasoline during the years before the automobile came into use, that its

> disposition was one of the biggest worries of the refiner. He was glad to dispose of it at any price and thousands of gallons were sold at a fraction of a cent a gallon, to say nothing of the immense quantity that was thrown away because there was no demand for it at all."

and that,

> "* * * As late as 1906, only about 100,000 automobiles were in service."

That was the status in 1906 of the extent of the demand for gasoline as fuel for use in the internal combustion engine when Congress began consideration of the Hepburn Amendment to the Transportation Act of 1887. The words "oil" and "pipe line" were not contained in the Transportation Act of 1887.

In *Church of the Holy Trinity* v. *United States*, 143 U. S. 457, it was held that:

> "A thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers,"

and

> "* * * Another guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous events, the situation as it existed and as it was pressed upon the attention of the legislative body."

The legislative history of the Hepburn Amendment, for the purpose of demonstrating its intent, was set forth at length in the Government's brief in the *Pipe Line Cases* (234 U. S. 548) and is reprinted at pages 713-723 in Volume II of the record in this case. Congress was considering abuses *monopolistically* practiced against *well owners* to

their detriment in their effort to find an outlet for their crude oil.*

This statement requires a comparative definition of "crude" (or rock) oil, technically called petroleum which may be said to be of either "paraffin" or "asphalt" base and has been defined to be a complex mixture of carbon and hydrogen in chemical combination, which differs from a definite chemical compound such as alcohol in that the petroleum molecules, which are inconceivably minute, are not all of the same size. The smaller and lighter particles of petroleum, which are separated and refined, we call gasoline.

Congress was not dealing, nor intending to deal, with the transportation of such type of refined product in its consideration of the Hepburn Amendment, as is fully shown in the debates (R. Vol. II, pp. 713-723) to which reference has just been made, and most certainly could not have been in-

* There is one thing that is certain in this case; viz., that there are no *monopolistic* features in the limited products pipe line operations of this small independent refining company, *wholly owned* by the members of the family of the late H. H. Champlin (R. Vol. I, p. 167), which has but 3½ per cent of the sales of the industry in the area served by the pipe line (R. Vol. I, p. 49). The lack of the important element of monopolistic control so necessary in the creation of the common law status of common carrier "in substance, if not so in form," of which Mr. Justice Holmes was speaking, is evidenced by the unquestioned failure of the Government at any place in its brief, to discuss such important question or to make any claim as to common law status of common carrier upon the Appellant's part, other than that it

(a) crosses state lines and public highways;

(b) makes a "specific charge for transportation" (which incidentally it does not do);

(c) and is engaged in hauling its manufactured *products* to a point where they are stored in off season awaiting their sale upon an open market, in the seasonal peak demand for such products.

It should also be remembered that Appellant does not own or operate any other pipe line of any kind and is not authorized by its charter to transport by pipe line as a common carrier.

tending to include within the terms of the Amendment the regulation of the transportation of gasoline by pipe line in the then state of the art of pipe line construction.

Transportation of refined petroleum products by pipe line was, at the time of the adoption of the Hepburn Amendment, twenty-four years in the future and had not been dreamed of in that early period of automobile development. Furthermore, the adoption of the 1920 Amendment was ten years in advance of the products pipe line development.

Congress was dealing with abuses being practiced in the transportation of "crude" (or rock) oil for manufacturing purposes and was not concerned in the least with the regulation of the disposal upon the market of refined products (not then in general use) which, after the same come to rest in storage tanks, remain at all times the property of the manufacturer until sold.

In Technical Paper No. 516, U. S. Department of Commerce *1932*, it is said:

> "Motor gasoline has been transported about refineries and from refineries to loading racks and docks by means of pipe lines ever since this fuel has been in demand. Pipe line systems for transporting motor gasoline from refineries to distribution centers have, in the past, been repeatedly discussed by refiners and marketers; until recently, however, the plans were dropped as unfeasible. Several years ago a group of Mid-Continent refiners considered the construction of a cooperative motor-gasoline line to extend from Oklahoma to some Mississippi River point, but the line was never built. The chief objection raised at that time to such a system was that gasoline specifications used by the various refiners was not uniform; as it was believed that all grades of gasoline would be mixed in pipe line movement no refiner could be sure that he could withdraw from the system gasoline that would meet his specifications. Since the promulgation of United States Government master specifications for liquid fuels, which many states have adopted, this objection has been largely overcome. Also it appears that by proper operation of the lines gasoline of various grades can be transported without mixing to an appreciable extent.

> "On February 1, 1930, the Standard Oil Company of New Jersey began to transport motor gasoline inland through its Tuscarora pipe line from its Bayway refinery, on New York Harbor, to various points in New Jersey and Pennsylvania, according to a personal communication from E. J. Lewis, president, Tuscarora Oil Co. (Ltd.). The pipe line had formerly been used to transport crude oil from fields in western Pennsylvania to the Bayway refinery. This line is approximately 371 miles long and is a common carrier. It is the first long line ever used for the transportation of motor gasoline from a refinery to markets."

It has also been said by the Interstate Commerce Commission in *Petroleum Rail Shippers Ass'n* v. *Alton & Southern Railway*, 243 I. C. C. 589, No. 28106, decided March 1, 1941, that:

> "Prior to the perfection of the process of electric welding, pipe line transportation was practically confined to (the) crude oil. That process has made possible the transportation of refined petroleum without loss by reason of imperfect pipe joints; and as a result, since 1931 there has been a rapid growth of gasoline pipe lines."

The regulation of a pipe line such as is here involved in its use for the transportation of refined petroleum products such as gasoline, kerosene and Diesel fuel, being unknown in 1906 when the Hepburn Amendment was passed, and having never been employed prior to the passage of the 1920 Amendment, could no more have been in contemplation by Congress, than was the regulation of power impulses through ether (radio) in mind when telephone and telegraph communication was first considered for regulatory legislation.

The Congress recognized the change in the state of the art of communication by the invention of the radio and legislated accordingly. In a note (40 A. L. R. 1514) upon the subject, "Legal Aspects of Radio Communication and Broadcasting," it is said:

> "Congress, under its power to regulate foreign and interstate commerce, *assumed control of radio* communication and, after the conclusion of an international convention between the United States and most of the other countries of the world, provided for the enforcement of the provisions of such convention by the enactment of the Act of August 13, 1912, (37 Stat. at L. 302, Chap. 287, Comp. Stat. §10, 100 to 10,109, 9 Fed. Stat. Ann. 2d ed., p. 524). Further regulations were made by the Resolution of June 5, 1920 (41 Stat. at L. 1061, Chap. 269, Fed. Stat. Ann. Supp. 1920, p. 261) and the Resolutions of April 14, 1922 (42 Stat. at L. 495, Chap. 132, Fed. Stat. Ann. Supp. 1922, p. 307), and February 28, 1925 (43 Stat. at L. 1091, Chap. 378)."

Congress was laboring, in the passage of the Hepburn Amendment, as well as in the passage of the 1920 Amendment, to afford well owners a means for the transportation of their "crude" oil. It was not concerned with marketing problems of manufacturers.

The latter subject, if it needs regulation, is now open for legislative attention. It certainly is not open for regulation upon judicial fiat by the courts or commissions.

That grave doubt existed in the Interstate Commerce Commission as to its right to regulate petroleum products pipe lines, is evidenced by the fact that such lines had been in unregulated use for some eleven years, when on February 7, 1941, a divided division of the Commission (Splawn dissenting) determined that:

> "* * * the bureau of valuation proceed either against the Champlin Refining Company or the Standard Oil Company of Indiana in such manner as will bring before the Commission the question of jurisdiction under Section 19a for the purposes of a *test* case." (R. Vol. II, p. 526.)

An operation which was considered physically unfeasible at the time of the enactment of a statute cannot be considered to be within the intent of the statute, even if within its words.

CONCLUSION.

There are a number of statements in the Government's brief which will be identified, which require special notice:

First, (Br. p. 26) it is said:

> "* * * It was expressly held in the *Pipe Line Cases*, 234 U. S. 548, 560, that the application of the Act could not be circumvented by the artifice of requiring that transfer of title take place prior to the commencement of transportation over the pipe line. Similarly it would seem clear that appellant should not be permitted to defeat the applicability of the Act by requiring that transfer of title take place only after the transportation by pipe line has been completed."

The implication in the above statement that the Appellant is employing an artifice by requiring transfer of title to take place only after transportation by the pipe line has been completed, is completely unjustified. The Appellant can not transfer title until a sale has been made. There is no relationship in principle or otherwise in what the Standard and affiliated companies were doing in the *Pipe Line Cases* and what the Appellant is doing in this case. The Standard was buying crude oil for manufacturing purposes; the Appellant is selling manufactured products. The Standard was dealing with producers who were without other practical means of transportation. The Appellant deals with a consuming world which is privileged to purchase like products from any number of manufacturers who offer for sale an equally satisfactory product at exactly the same price.

Second, it is further said on page 26 of the Government's brief, with reference to the *Pipe Line Cases*, that,

> "* * * This Court held that it would be 'a sacrifice of fact to form' to exempt them on that account from compliance with the Act (234 U. S., at 560). The same would be true here if appellant were permitted to obtain exemption from the regulatory statute by the de-

vice of imposing, as a condition to the transportation by means of its pipe line, a sale to be consummated upon completion of the transportation."

To say that Appellant is attempting to obtain exemption from the Interstate Commerce Act by the *device* of imposing as a condition to the transportation by means of its pipe line, a sale to be consummated upon completion of the transportation, is so at variance with the letter as well as the spirit of this record as to scarcely require answer.

The Appellant is transporting products to its storage tanks for sale to customers in a territory that it cannot otherwise competitively reach and it must store these products in off season to have same available in the peak season, because the capacity of the pipe line is not sufficient to meet the seasonal peak demands. It is interested in selling its products to keep its company alive, and as to sales there is no condition as to transportation. As the refinery manufactures the product and the small plant storage tanks must be emptied, the product as a mere refinery operation is put into the pipe line and taken to the larger storage tanks at the places indicated as a means of availing the refinery of storage distantly located. Particular sales to be consummated in the future could not then possibly be in contemplation, having nothing in the world to do with the operation of such products pipe line. It is a mere matter of refining operations until storage.

Third, at the top of page 27 of the brief, it is said:

"* * * The only distinction between the two situations is that appellant is transporting petroleum products from its refinery to market for sale, instead of crude oil to its refinery after purchase. It is submitted that this distinction is productive of no difference in the legal result, and that in this case the result follows *a fortiori*, for a company transporting crude oil might much more plausibly assert that what is transported was simply raw material for its own use at its refinery than appellant could claim that finished products moving to the market were

destined for its own use. The fact that the commodity transported is refined petroleum products instead of crude oil is, in itself, obviously immaterial * * *."

It is argued that the difference between the Valvoline operation and the Appellant's operation is merely one of type of material and that a company transporting crude oil might much more plausibly assert that what it transported was simply raw material for its own use at its refinery (the Uncle Sam case). The Appellant has never claimed that the products of its refinery were being transported to its storage tanks *for its own use.* The Uncle Sam Company was not transporting any crude oil for its own use in any sense such as the Government argues in this case. We refer to R. Vol. II, p. 829, as to just what the Uncle Sam operation was. We quote:

> "* * * It owns and operates a pipe line, with storage tanks, from its wells in the reservation in the State of Oklahoma to its refineries in Cherryvale, Kansas. Through the agency of a selling corporation, the capital stock of which it owns, it ships its refined product in tank cars, owned by it, from its refinery at Cherryvale to stations owned by it in the State of Missouri. * * *"

There has been much lack of technical information involved in the Government's consideration of the words "for its own use," for throughout this litigation, the construction placed upon the words so used by Mr. Justice Holmes have been interpreted as meaning for instance the "greasing of machinery or the firing of the boilers." The obvious fact that crude cannot be used for either purpose unless at least partially refined has been wholly ignored. Of course, the Uncle Sam operation from well to consumer is exactly the operation of the Appellant from well to consumer, the only difference being that in the Uncle Sam case the raw product was coming into the refinery and in the Appellant's case the finished product was leaving the refinery. The Appellant would hardly be expected to concede that it was

storing its finished products in its storage tanks at Hutchinson, Superior and Rock Rapids *for its own use*, and neither will it be contended that the Uncle Sam Company was transporting its refined products to Missouri for *its own use*.

Fourth, at the bottom of page 27 of the brief, it is said:

> "* * * It would be artificial to draw a distinction because appellant is selling to the public, instead of purchasing from the public as Valvoline did. * * *".

The Appellant does not draw such distinction. There is no relation whatever in the operations of the Valvoline Company and the Appellant. The Valvoline operations in principle were the operations of the Standard and affiliated companies in the *Pipe Line Cases*. The operations of the Appellant and the operations of the Uncle Sam Company are in principle similar operations. The Government has never been able to handle the decision of this Court in the Uncle Sam case. It does not handle that decision in this brief. It chooses to talk about Valvoline when it should be talking about the Uncle Sam Company, for Valvoline does not present the related principle nor the related question. The truth of the matter is that the Uncle Sam opinion of this Court cannot be handled consistently with the Government's position, and to affirm the trial court's judgment requires the overruling of the *Uncle Sam* decision which was approved by Mr. Justice Reed in the *Valvoline* case.

Fifth, in connection with certain condemnation cases which were instituted by the Cimarron Company as a result of erroneous advice by one of the Appellant's counsel, which cases were later dismissed and satisfactorily settled, it is said, at the bottom of page 29 and at the top of page 30 of the brief:

> "* * * These suits were later dismissed (R. 176, 200, 277-80); but the record does not disclose whether the

owners of this land were ever notified that appellant's counsel had concluded that its subsidiary should relinquish and disclaim its common carrier status in Kansas. The fact that the property was acquired by settlement of the pending suits, rather than by consummation of the eminent domain proceedings is immaterial under 'the rule, that settlement by an eminent domainer, with one whose property has been appropriated, is equivalent to the full and complete exercise of the power of eminent domain.'"

The difficulty with this statement is that it is subject to an implication which impugns Appellant's good motives and good faith. The truth of the matter is that the entire transaction from the date of the first activity by the Cimarron Company in connection with the pipe line to the day of the completion by the Appellant was carried out with the highest standards of ethical business conduct. The Cimarron Company, which was without funds, was selected to build the line because the management were told that the line had to be a common carrier line in the State of Kansas. When it was learned that that statement was not correct, and the subsequent records show that the authorities in the State of Kansas so ruled, the Cimarron Company was taken out of the picture immediately. Its debt to the parent company, the Appellant, was taken off the Champlin books. The seven landowners that had been sued in four suits were satisfactorily and completely settled with. That is the record; and furthermore the line was completed by the Appellant who operated it from the first day of its use, a perfectly honorable transaction from beginning to end.

Sixth, it is true that in Iowa a permit was obtained to build the line through two counties in that state to the small town of Rock Rapids. However, the line was completed through the two counties wholly by purchase of right-of-way and by dealings with the local (public) authorities and had been completed before the Appellant discovered that the permit carried with it the right to exercise eminent domain. Eminent domain had not been exercised and the line

had been completed, which made it unnecessary to utilize eminent domain; but nevertheless the company, maintaining a consistent position, notified the authorities in Iowa that the company had no use for such permit and asked that a permit be substituted which would eliminate the eminent domain provision. The authorities in Iowa promptly granted the second permit, eliminating the power of eminent domain, and that is the way the record stands. And again we inquire as to the justification of the implications in the statement (Br. p. 30):

> "* * * While no condemnation suits were brought in Iowa, it is a reasonable supposition that the authority to exercise the right of eminent domain in Iowa, which appellant enjoyed for over a year and a half, as well as the pending suits in Kansas, facilitated the purchase of the needed lands at prices favorable to appellant."

There is not a word in this record of any short dealing by the Appellant on a single foot of right-of-way from Enid to Rock Rapids, a distance of 516 miles, and the Appellant has furnished for the record the detail of the legal title to and the authority for the use of every foot of that right-of-way in so far as public highways and the crossing of the Missouri River, for which authority was obtained from the War Department, are concerned. The record is silent as to any litigation or controversy in any instance. As a matter of fact, the line was being built in a hurry. It had to be. And when a line is being built on the basis of purchase of private easements, the land owner must be settled with before the purchaser may go upon his land, so everyone had to be satisfied before the ditch-digging machine could go forward.

The Government undertakes to put the status of a common carrier on this company on the basis of

> (a) hauling its own products to storage places awaiting a day when it hopes to be able to sell such products,

and

(b) upon the manner in which it obtained its right-of-way,

upon which activity not a word of criticism appears in the entire record.

WHEREFORE, it is respectfully submitted that the judgment of the trial court should be reversed and injunction should issue restraining enforcement of the order issued by the Interstate Commerce Commission against Appellant, all as prayed for in Appellant's amended petition; and Appellant now prays for the judgment of this Court accordingly.

Respectfully submitted,

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FILE COPY

MAY 14 1945

No. 1269

In the Supreme Court of the United States

OCTOBER TERM, 1944

CHAMPLIN REFINING COMPANY, APPELLANT

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

MOTION OF THE UNITED STATES TO AFFIRM

MOTION TO AFFIRM

Appellee, United States of America, pursuant to Rule 12, paragraph 3, of the Rules of the Supreme Court of the United States, moves that the decree of the district court be affirmed.

This is a direct appeal from the final decree, entered on April 16, 1945, of a specially constituted district court of three judges established pursuant to the Urgent Deficiencies Act of October 22, 1913, dismissing appellant's complaint to set aside an order of the Interstate Commerce Commission. Appeal was allowed on April 16, 1945, and appeal papers were served on April 21, 1945.

The Commission's order, dated June 12, 1944, required appellant to comply with the Commission's valuation procedure under Section 19a of the Interstate Commerce Act, as amended. This order was made in a proceeding which arose out of appellant's petition alleging that it is not a common carrier subject to the provisions of the Interstate Commerce Act and praying that the Commission so determine its status. Appellant's petition was filed following a demand by the Commission that valuation data be furnished to the Commission in accordance with its requirements applicable to carriers subject to the act.

Although appellant's assignment of errors contains 19 items, the only question in the case is whether

appellant is a "common carrier" within the meaning of Section 1 of the Interstate Commerce Act, as amended, and hence subject to the valuation provisions of Section 19a of the act.

It is submitted that the appeal presents no substantial question and that the case at bar is controlled by two applicable decisions, *The Pipe Line Cases*, 234 U. S. 548, and *Valvoline Oil Company* v. *United States*, 308 U. S. 141. The facts are substantially undisputed. Appellant owns and operates a pipe line known as a "products" pipe line, which is used for transportation of refined petroleum products only. The pipe line extends from appellant's refinery at Enid, Oklahoma, to pipe line terminals at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa. This pipe line is not used as a "crude oil" pipe line to bring crude oil to appellant's refinery from the wells. For that purpose appellant employs the line of a subsidiary corporation, which is admittedly a common carrier. Construction of the "products" pipe line involved in the case was originally undertaken by the subsidiary corporation, and a number of eminent domain proceedings were instituted. But this plan was abandoned prior to completion of the line, and settlements were made with the respective property owners. Title to the pipe line was taken by appellant before construction of the line was completed or it was used for the transportation of petroleum products. Appellant has had title to all products transported over the line, and has not transported products belonging to anyone else.

Appellant sells the products transported over the line in "spot-market" and "contract" sales, in both of which types of transactions the purchaser pays a price arrived at by adding to the refinery price at Enid, which is separately specified, an amount designated as a "differential." This "differential" is an amount equal to the through rail rate from Enid to purchaser's destination less the charges paid out by the purchaser for the short-haul transportation from appellant's pipe line terminal to destination. Other oil companies employ the same method of pricing their product, and occasional departures from the formula are made by appellant when necessary to meet competition.

Upon these facts, the Commission found that appellant was a "common carrier" within the meaning of Section 1 of the Interstate Commerce Act as amended, and hence subject to the valuation provisions of Section 19a.

The pertinent statutory provision reads as follows:

> SEC. 1 (1) That the provisions of this part shall apply to common carriers engaged in—
>
> * * * * * *
>
> (b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water;
>
> * * * * * *
>
> (3) (a) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons natural or arti-

ficial, engaged in such transportation as aforesaid as common carriers for hire.

The effect of this language is to make the valuation and other provisions of the act applicable to "all pipe-line companies" which are "engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line." Appellant clearly is included within the statutory language. While it is true that the statute speaks of "common carriers" engaged in the transportation of certain commodities by pipe line, the statute also explains what that term means by supplying its own definition of the expression "common carrier." Inquiry into what was necessary or sufficient to establish the status of common carrier at common law is therefore irrelevant and superfluous.

An authoritative construction of the pertinent provision is furnished in the *Valvoline* case, where Mr. Justice Reed said:

> Section 1 (3) defines a common carrier to include "all pipe-line companies." If this definition is not limited by the subsequent clause "engaged * * * as common carriers for hire," extended consideration of these characteristics of a private carrier is unnecessary as the language of the definition is decisive.
>
> * * * * *
>
> As now written, the section brings railroads under the Act by means of the last clause of subsection (3) only. This clause is a con-

junctive, not a modifer. It does not affect the generality of the first clause as to pipe-line companies. (308 U. S. at 144, 145–6).

The *Valvoline* case, 308 U. S. 141, 145, likewise establishes that the present statutory language has the same meaning as the original provisions of the Hepburn Act of June 29, 1906, 34 Stat. 584, which was construed in *The Pipe Line Cases*, 234 U. S. 548, 559.

As originally enacted the provision making pipe lines common carriers read as follows:

> That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad * * * The term "common carrier" as used in this Act shall include express companies and sleeping car companies. (Hepburn Act of June 29, 1906, 34 Stat. 584.)

The language of the Hepburn Act was construed in *The Pipe Line Cases*, 234 U. S. 548, 559–60, as follows:

> The provisions of the act are to apply to any person engaged in the transportation of oil by means of pipe lines. The words "who shall

> be considered and held to be common carriers within the meaning and purpose of this act" obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such.

It will be noticed that the provisions of the Interstate Commerce Act as amended by the Hepburn Act and construed in *The Pipe Line Cases*, applied to any person engaged in the transportation of oil or other commodity (except water and natural or artificial gas) by means of pipe lines. The law at that time did not contain the expression "pipe line companies." That wording first appeared in the language adopted in 1920. But if, as was held in the *Valvoline* case, the meaning of the Act remained unchanged, appellant cannot escape from the clear terms of the earlier version by reason of any ambiguity with respect to the meaning of the term "pipe line companies." However, no ambiguity exists. Appellant, owning and operating an interstate pipe line, is undoubtedly a pipe line company. This is obvious from the plain meaning of the language used, even apart from the authoritative determinations in the *Valvoline* and *The Pipe Line Cases* to the effect that the present statute has the same meaning as the earlier version, and that the earlier version included any person engaged in transportation by means of

pipe lines. Appellant's contention that it is not a pipe line company because it is also engaged in the refining business is untenable. The same argument was advanced in the *Valvoline* case and by the Tidewater Pipe Company, Ltd., in *The Pipe Line Cases*.

Appellant's ownership of the products transported is likewise not controlling. That circumstance was also present in the *Valvoline* and *The Pipe Line Cases*. Equally unavailing is appellant's argument that it is not a pipe line company, within the meaning of the act, because it was not until 1930, long after enactment of the statute, that pipe lines could be constructed which were capable of transporting the type of petroleum products handled by appellant. Since the provision of law covers "transportation of oil or other commodity, except water and except natural or artificial gas," appellant's contention is untenable. The fact that the statute contains the words "or other commodity" clearly destroys the force of appellant's argument.[1]

Since, by virtue of the statute itself, persons engaged in the transportation specified in Section 1 (1) (b) of the act are made common carriers, cases relied on by appellant (such as *Pennsylvania Railroad*

[1] "If Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators." *Barr* v. *United States*, No. 287, this Term, decided February 5, 1945 (slipsheet p. 5); *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 644; *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 257; *Browder* v. *United States*, 312 U. S. 335, 339; *Ozawa* v. *United States*, 260 U. S. 178, 195–196; *Pickhardt* v. *Merritt*, 132 U. S. 252, 257.

Company v. *Public Utilities Commission of Ohio*, 298 U. S. 170) dealing with other types of transportation are not in point, because no similar statute is in effect with respect to such modes of transportation.

The legislative history of the Hepburn Act supports the judicial construction which has been given to it.

The provision including pipe lines was offered as an amendment by Senator Lodge of Massachusetts on May 4, 1906 (40 Cong. Rec. 6361).

Senator Foraker, of Ohio, thereupon stated:

> I do not want to make any opposition to the Senator's amendment, but it occurs to me that the amendment ought to be further amended, so as to provide that is shall apply only to pipe lines operated for the public. I do not understand how you could compel a man who has a private pipe line of his own to become a common carrier. * * * I think such a limitation ought to be put in the Senator's amendment by an amendment to the amendment that it shall apply to all pipe lines that are carrying for the public, and not to private lines that an individual or a single corporation may have laid down and put into operation for its own benefit. * * * (40 Cong. Rec. 6361)

To this Senator Nelson of Minnesota replied that:

> if that amendment is adopted it will practically nullify the provision, because every one of these pipe lines can say "we refuse to do business for the public." (40 Cong. Rec. 6365)

Senator Lodge emphasized that:

> the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come under this rule, will, as the Senator from Minnesota [Mr. Nelson] says, absolutely destroy the value of my amendment. (40 Cong. Rec. 6367)

During the course of debate an unsuccessful attempt was made to amend Senator Lodge's amendment so that it would apply only to carriers "for the pub lic' or "to transportation for hire" or "for compensation." Senator Lodge vigorously opposed such modification of the wording, and declared that such a limitation would absolutely destroy the effectiveness of the proposed legislation. He said:

> If you put in the words "transportation for hire" or "transportation for the public" you absolutely destroy this amendment so far as its effectiveness is concerned. The method of getting the oil is, as a rule, that the Standard Oil Company or the Pure Oil Company, which are the two great carriers of oil, buy it of the well owner and carry it, and they would immediately say they were not carrying for the public; that they were carrying for themselves. That is the reason why the word "public" or "transportation for hire" put in there would immediately wreck this amendment. (40 Cong. Rec., p. 7000.)

Moreover, it cannot seriously be contended that the statute is unconstitutional as applied to plaintiff. In *The Pipe Line Cases*, 234 U. S. 548, 561, it was expressly held that "So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid." This ruling clearly precludes any question as to the constitutionality of the act as applied to appellant. Appellant's pipe line was not constructed until after 1935, long after the enactment of the original pipe line provision and its amendment in 1920.

Appellant's entire case is based upon what Mr. Justice Holmes says with respect to the Uncle Sam Oil Company in *The Pipe Line Cases*, 234 U. S. 548, 561–2.

> There remains to be considered only the Uncle Sam Oil Company. This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his home. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being

> merely an incident to use at the end. In that case the decree will be affirmed. In the others the decree will be reversed.

Discussing this passage, Mr. Justice Reed said in the *Valvoline* case, 308 U. S. 141, 146:

> The appellant relies upon the *Pipe Line Cases* to show that the present act does not cover a pipe line transporting oil for its own refining purposes only. The discussion referred to is that concerning the Uncle Sam Oil Company. But that company's pipe line was used for the "sole purpose of conducting oil from its own wells to its own refinery." This was held not to be transportation under the Act. Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline.

It is plain that appellant's operations do not fall within the terms of the exception described in the case of the Uncle Sam Oil Company. Appellant's pipe line does not transport oil from its own wells to its own refinery. Nor does appellant transport petroleum products "for its own use." It transports them for sale to the public. The products it transports through its pipe lines are not "for its own refining purposes only." Cf. *Valvoline* case, 308 U. S. 141, 146. On the contrary, appellant does not transport oil through its pipe line "until after preparation for market." Cf. *Valvoline* case, 308 U. S. 141, 143. The shipments made by appellant were not for

use in the refining process. They were for sale on the market of a completed product.

Moreover, in the *Uncle Sam* case the market price was the same at Bartlesville and Cherryvale, the two termini of the Uncle Sam Oil Company's pipe line. Appellant's sale price, however, at purchaser's destination differs from its sale price at the Enid refinery. Indeed, the difference is meticulously computed and separately stated in billing the purchaser. Since the product transported and sold by appellant is identical, in so far as its nature or processing is concerned, at both ends of the pipe line, this difference in value or market price at origin and at destination is attributable entirely to transportation, and is calculated in terms of freight rates. It is idle for appellant, which furnishes such transportation and collects a specific charge therefor, to contend that this amount paid by the purchaser is not a charge made for transportation and representing compensation to appellant for transporting the product from Enid through the pipe line to the respective terminals.

Hence it is submitted that appellant has not brought itself within the exception of the *Uncle Sam* case, and that the case at bar is controlled by the *Valvoline* and *The Pipe Line Cases*. Unless the distinction between a "crude oil" pipe line and a "products" line carrying refined petroleum products to market is deemed determinative, it would seem that the case at bar is plainly governed by the decision in the *Valvoline* case. It is submitted that the difference between a "crude oil" line and a "products"

line is of no legal significance. Indeed the *Valvoline* decision would seem to apply *a fortiori* to appellant, inasmuch as a company transporting crude oil might much more plausibly assert that what it transported was simply raw material for its own use at its refinery than appellant could claim that finished products moving to the market were destined for its own use. The Interstate Commerce Act is not to be thwarted by technicalities with respect to the time and place where title passes. *The Pipe Line Cases*, 234 U. S. 548, 560, *Rearick* v. *Pennsylvania*, 203 U. S. 507, 512.

By making a sale f. o. b. purchaser's destination or at the pipe line terminal, appellant would obtain an advantage which it clearly could not enjoy if the same products, transported in the same manner, were sold f. o. b. Enid refinery. But it was expressly held in *The Pipe Line Cases* (234 U. S. 548, 560) that the application of the act could not be circumvented by the artifice requiring that transfer of title take place prior to the commencement of transportation over the pipe line. Similarly it would seem clear that appellant should not be permitted to defeat the applicability of the act by requiring that transfer of title shall not take place until after the transportation by pipe line has been completed.

In *The Pipe Line Cases* the companies involved "imposed as a condition to the carriage a sale to themselves" before the transportation commenced. The Court held that it would be "a sacrifice of fact to form" to exempt them on that account from com-

pliance with the act (234 U. S. at 560).. The same would be true here if appellant were permitted to obtain exemption from the regulatory statute by the device of imposing, as a condition to the transportation by means of its pipe line, a sale to be consummated upon completion of the transportation.

The power of Congress to legislate against evils connected with transportation by pipe line is not dependent upon technical niceties, but is equally effective to protect the public at either end of the pipe line. Purchasers to whom the pipe line company sells, as well as the sellers from who it buys, are entitled to the benefits afforded by the statutory provisions regulating transportation by pipe line. In each case the transportation is an essential element in a course of business which involves dealing with the public, and not merely a movement of raw material by the company from its wells to its refinery for its own use in connection with its refining operations.

It is evident that to come within the exception laid down by Mr. Justice Holmes in the case of Uncle Sam Pipe Line Company the pipe line company must be transporting oil from its own wells to its own refinery for its own use. The *Valvoline* case shows that if oil is transported which was bought by the pipe line company from other producers and then transported, the exception does not apply. It seems equally plain that the exception should not apply where, following completion of the pipe line transportation, petroleum products are sold to (instead of

purchased from) members of the public. It seems evident that no legal significance inheres in the distinction between a "crude oil" line bringing crude oil to the refinery and a "products" pipe line transporting finished petroleum products from the refinery. Consequently, the case at bar is not distinguishable from the *Valvoline* case.

For the foregoing reasons, it is evident that this appeal presents no substantial question. It is, therefore, respectfully submitted that the judgment of the district court should be affirmed.

HUGH B. COX,
Acting Solicitor General.

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In the Supreme Court of the United States

OCTOBER TERM, 1945

CHAMPLIN REFINING COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Summary of argument	8
Argument:	
I. The Commission had statutory power to make the order	10
A. Appellant is a "common carrier" within the meaning of the Interstate Commerce Act, as amended	11
B. Appellant falls within the rule of the *Valvoline* case and not that of the *Uncle Sam* case	18
C. Appellant cannot enjoy the benefits but disclaim the burdens of common carrier status	28
II. The order violated no constitutional right of appellant	31
Conclusion	33
Appendix	34

CITATIONS

Cases:	
Cornell Steamboat Company v. *United States*, 321 U. S. 634	12
Federal Club v. *National League*, 259 U. S. 200	23
Pennsylvania Railroad v. *Sagamore Coal Company*, 281 Pa. 233	33
Pennsylvania R. Co. v. *Public Utilities Commission*, 298 U. S. 170	13
Pierce Oil Corporation v. *Phoenix Refining Company*, 259 U. S. 125	28
Pipe Lines, In the Matter of, 24 I. C. C. 1	16
Pipe Line Cases, 234 U. S. 548	10, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 26, 32
Prairie Oil & Gas Co. v. *United States*, 204 Fed. 798	16
Producers Transportation Co. v. *Railroad Commission*, 251 U. S. 228	28
Rearick v. *Pennsylvania*, 203 U. S. 507	25
United States v. *Simpson*, 252 U. S. 465	16
Valvoline Oil Co. v. *United States*, 308 U. S. 141	9, 10, 12, 13, 15, 19, 20, 26, 31
Walling v. *Jacksonville Paper Co.*, 317 U. S. 564	22

671386—45——1

Statutes: Page

Hepburn Act of June 29, 1906, 34 Stat. 584 ..... 13, 14

Interstate Commerce Act, as amended, 49 U. S. C. 1, 19a:

Sec. 1 ..... 2, 8, 11, 12, 34

Sec. 19a 9, 10, 27, 36

Miscellaneous:

40 Cong. Rec.:

6361 16

6365 17

6373 17

6953 17

6999 17

7000 17

7001 18

7002 18

7004 21

7005 ..... 18, 21

7009 18

9101 ..... 14, 18

9102 ..... 14, 18

9103 18

9105 18

9107 18

9255 18

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 75

CHAMPLIN REFINING COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINION BELOW

The opinion of the specially constituted district court (R. 79) is reported in 59 F. Supp. 978. The report of the Interstate Commerce Commission (R. 57) is published in 49 Val. Rep. 542, the earlier report of Division 2 of the Commission (R. 47) appearing in 49 Val. Rep. 463.

JURISDICTION

The final decree of the three-judge district court was entered on April 16, 1945 (R. 113). Petition for appeal was presented and allowed on

April 16, 1945 (R. 114). The jurisdiction of this Court is invoked under Section 210 of the Judicial Code, 36 Stat. 1150, as amended by the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 208, 220 (28 U. S. C. 47a), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938 (28 U. S. C. 345). Probable jurisdiction was noted by this Court on June 18, 1945 (R. 965).

QUESTION PRESENTED

Whether the Interstate Commerce Commission's finding that appellant is a "common carrier" within the meaning of Section 1 (1) (b) and 1 (3) (a) of the Interstate Commerce Act, as amended, and its consequent order to appellant to furnish certain information and data required under Section 19a of the Act, were within the Commission's statutory and constitutional powers.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act, as amended, are set out in the Appendix, *infra*, pp. 34–39.

STATEMENT

The Interstate Commerce Commission, pursuant to its statutory duty "to investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions" of part I of the Interstate Commerce Act, on December 31, 1934, issued its

"Valuation Order No. 26—Revised" (R. 486), and on April 12, 1935, issued its "Valuation Order No. 27" (R. 509), requiring all pipe-line companies subject to the Act to furnish certain maps, charts, schedules, and inventories. Copies of Valuation Orders Nos. 26 and 27 were served on appellant on May 15, 1941 (R. 44–45). In lieu of compliance, appellant filed a petition with the Commission alleging that it was not a common carrier subject to the provisions of the Interstate Commerce Act and praying that the Commission so determine (R. 157). In due course, after full hearing, the proceeding instituted by appellant's petition resulted in the issuance of the Commission's report[1] and order of June 12, 1944 (R. 57, 67), wherein the Commission found appellant to be a common carrier of refined petroleum products by pipe line and subject to the Act, and required appellant to comply with Valuation Orders Nos. 26 and 27 (R. 486, 509). Appellant's petition for reconsideration was denied on July 26, 1944 (R. 67). On August 10, 1944, appellant filed suit in the United States District Court for the Western District of Oklahoma to set aside the Commission's order (R. 1). The United States and the Commission filed answers (R. 69, 73), and the cause came on for hearing on October 12, 1944 (R. 78, 121). On March 21,

[1] In this report the full Commission, after reargument, affirmed the findings made by Division 2 of the Commission in its report of December 14, 1942 (R. 47).

1945, the court rendered its opinion (one judge dissenting) wherein it upheld the validity of the Commission's order (R. 79). After denying, on April 13, 1945, appellant's petition for rehearing (R. 100), the court, on April 16, 1945, made its findings of fact and conclusions of law (R. 107) and entered its final decree (R. 113) dismissing appellant's suit. Petition for appeal was presented and allowed on April 16, 1945 (R. 114). On June 18, 1945, this Court noted probable jurisdiction (R. 965).

The material, substantially undisputed facts,[2] upon which the Commission's order is based (see R. 47–57, 57–66), are as follows:

Appellant, whose corporate charter authorizes it to transport petroleum (R. 427), owns and operates a pipe line extending from appellant's refinery at Enid, Oklahoma, to Rock Rapids, Iowa, with terminals at Hutchinson, Kansas; Superior, Nebraska; and Rock Rapids, Iowa (R. 166, 191). Construction of the line from Enid to Superior was completed in June 1935 (R. 133); the portion from Superior to Rock Rapids

[2] Although appellant does contend that there is no evidence to support the order of the Commission (R. 958), it is believed that this attack is primarily directed at the legal sufficiency of the facts found to support the order made, and that there is no substantial dispute with regard to the sufficiency of the evidence of record to support the findings made by the Commission in its reports (R. 47–57, 57–66). That those findings are abundantly supported by substantial evidence will readily appear upon examination of the record references cited in the statement which follows.

was completed in May 1940 (R. 169, 191). Besides operating this pipe line, appellant is engaged in the refining, distribution, and sale of petroleum products in interstate commerce as an integrated oil company (R. 167). Appellant's products, manufactured at the Enid refinery, are produced for sale, and are sold and delivered, to the general public in many States (R. 206, 245).

Appellant's pipe line is known as a "products" pipe line, which is used for transportation of refined petroleum products only (R. 165). The pipe line is so constructed that it has no connection with any other pipe line (R. 194, 211); there is no point at which any petroleum products can be put into the line other than at the Enid refinery (R. 194); there is no point other than the three terminal points where products can be taken from the pipe line (R. 192); delivery of the products at the three terminal points is made from the storage tanks at the terminals by means of truck racks or railroad tank car racks and is not made directly from the pipe line in any instance (R. 194–5); no tariffs have been filed with the Interstate Commerce Commission or with any state commission or regulatory body (R. 52); appellant is the sole owner of the products transported through its pipe line (R. 194, 203, 249), and has never transported any products the title to which was in any other company (R. 194, 249).

Appellant's pipe line is not used as a "crude oil" pipe line to bring crude oil to appellant's re-

finery from the wells (R. 165, 190). For the purpose of supplying the crude oil requirements of the Enid refinery, appellant employs the line of a wholly owned subsidiary corporation, the Cimarron Valley Pipe Line Company, which is admittedly a common carrier, operating within the State of Oklahoma (R. 165, 190). Construction of the "products" pipe line involved in this case was originally undertaken by the subsidiary corporation (R. 195, 198–199). It filed declarations with the Kansas Public Utilities Commission that it was a common carrier, and a permit was issued describing it as such (R. 264–B, 267–8, 431). It also instituted a number of eminent domain proceedings in Kansas (R. 200, 273–5). Subsequently, upon the completion of the line between Enid, Oklahoma, and Superior, Nebraska, in June 1935 (R. 169), the subsidiary corporation withdrew all of the eminent domain proceedings except two, one of which the court, on July 5, 1935, dismissed for lack of jurisdiction (R. 278) and the other of which had been dismissed on April 1, 1935, because brought by an agent not authorized to practice in the court (R. 279). Settlements were made with the defendants in all the suits for the use of the lands involved. Appellant, on June 10, 1935, took title from its subsidiary to the above-described portion of the pipe line (R. 280–A) and began to use it for the transportation of its petroleum products (R. 177). On July 2, 1936, the Cimarron withdrew from the

State of Kansas and in 1941 the Kansas Corporation Commission by formal order "figuratively" struck the Cimarron's "certificate of convenience and authority" from its files and records (R. 433–434).

The portion of the pipe line between Superior, Nebraska, and Rock Rapids, Iowa, was constructed under a permit, applied for in 1939 by appellant in its own name and issued by the Iowa State Commerce Commission, to construct and operate a pipe line for the transportation of petroleum products "under, along, over or across any public and/or private highways, grounds, waters or streams of any kind * * * or the lands of any person, company, or corporation," in Iowa (R. 480–A). The permit contained express authority to exercise the right of eminent domain (R. 482). In 1941, after the entire line had been completed, appellant notified the Iowa Commission of its desire to disclaim common carrier status and requested issuance of a new permit (R. 483). The new permit, however, still contained provisions authorizing the company to use the property of others (R. 485).

Appellant uses the pipe line for the transportation of petroleum products which are sold by it in "spot-market" and "contract" sales (R. 216–17, 226). In both of these types of transactions, the purchaser of products which have been transported through the pipe line pays a price which is determined by adding to the refinery price

671386—45——2

at Enid, which is separately specified, an amount designated as a "differential" (R. 212, 215, 254, 262): This "differential" is an amount equal to the through rail rate from Enid to purchaser's destination, minus the charges paid out by the purchaser for short-haul transportation from appellant's pipe-line terminal to destination (R. 253–55). Other oil companies employ the same method of pricing their products (R. 219, 259), and occasional departures from the formula are made by appellant when necessary to meet competition (R. 213, 220, 253, 258). The refined petroleum products sold to purchasers at various destinations after transportation by the pipe line are the same products for which the separately specified Enid price is fixed, and are not further processed in any manner after leaving the refinery at Enid (R. 191, 207, 210).

SUMMARY OF ARGUMENT.

I

The words of Section 1 (1) and (3), its legislative history, and the authoritative construction put upon these provisions by this Court make it abundantly clear that appellant, being a pipe-line company "engaged in the transportation of oil or other commodity," is a common carrier within the meaning of the Interstate Commerce Act, as amended, and, even if not a common carrier in the common-law sense, may be required to furnish the information sought by the order here

entered pursuant to Section 19a. Appellant's pipe line, used in transporting petroleum products from its refinery to storage tanks from which the products are distributed to appellant's customers, is not employed merely as an incident to manufacture but as a part of the sale and distribution facilities through which appellant's petroleum products are marketed in interstate commerce. That appellant makes a distinct charge for transportation by way of the pipe line is striking evidence that, in substance, it is serving the public just as much as if title to the petroleum vested in the purchaser before passage through the pipe line. Appellant's transportation of petroleum products to market is no less subject to regulation than the transportation of crude oil to a refinery in *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, where the oil in transit, the pipe line, and the terminal refinery were all owned by one company. Moreover, appellant, having enjoyed some of the privileges of a common carrier in the common law sense, cannot properly complain if corresponding obligations are placed upon it.

II

Appellant has been ordered only to supply certain maps, charts, schedules, and inventories to the Commission. The Commission's constitutional power to make such an order has been ex-

pressly upheld by this Court in the *Valvoline* case. In that decision, this Court ruled that a carrier could not raise constitutional objections based on statutory provisions other than those under which the information is ordered to be produced. That limitation is applicable here as well. In any event, the appellant's constitutional rights were not infringed, particularly since its pipe line was constructed long after enactment of the statute. *The Pipe Line Cases,* 234 U. S. 548, 541.

ARGUMENT

I

THE COMMISSION HAD STATUTORY POWER TO MAKE THE ORDER

Section 19a of the Interstate Commerce Act requires and empowers the Commission to "investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of" Part I of the Act, and requires and directs "every common carrier * * * to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct." Consequently, the order of June 12, 1944, assailed in the case at bar, is obviously warranted under the terms of Section 19a if appellant is a "common carrier" within the meaning of the Act. It is submitted that appellant is such a common carrier.

A. *Appellant is a "common carrier" within the meaning of the Interstate Commerce Act, as amended.*—The statutory definition of a "common carrier" within the meaning of Part I of the Act is found in the following language of Section 1:

> SEC. 1. (1) That the provisions of this part shall apply to common carriers engaged in—
>
> * * * * *
>
> (b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water;
>
> * * * * *
>
> (3) (a) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire.

The effect of this statutory language is to make the valuation provisions of the Act applicable to "all pipe-line companies" which are "engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line." Appellant clearly is included within the meaning of the words used. While it is true that the statute speaks of "common carriers" engaged in the transportation of certain commodities by pipe line, the statute also explains what that term means by supplying its own definition of

the expression "common carrier." Cf. *Cornell Steamboat Company* v. *United States*, 321 U. S. 634, 637.

Appellant's extended argument (Br. 30–40) designed to show that this construction of the statute is incorrect and that the Act applies only to "common carriers' in fact" (Br. 30) requires little consideration, for this Court, in *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, specifically rejected such a view (308 U. S. at 144, 145–146):

> Section 1 (3) defines common carrier to include "all pipe-line companies." If this definition is not limited by the subsequent clause "engaged * * * as common carriers for hire," extended consideration of these characteristics of a private carrier is unnecessary as the language of the definition is decisive.
>
> * * * * * *
>
> As now written the section brings railroads under the Act by means of the last clause of subsection (3) only. This clause is a conjunctive, not a modifier. It does not affect the generality of the first clause as to pipe-line companies.

Thus the statute, as construed in the *Valvoline* case, applies to (1) all pipe-line companies, (2) express companies, (3) sleeping-car companies, *and* (4) all persons, natural or artificial, engaged as common carriers for hire in such transportation (*e. g.*, by railroad) as is described in Section 1 (1) and Section 1 (2). Whether or not they are

common carriers *for hire,* pipe-line companies, express companies, and sleeping-car companies are covered; those engaged in other callings are within the Act only if they are common carriers for hire. It was with this distinction in mind that this Court in the *Valvoline* case (308 U. S. at 146) put aside as irrelevant the decision of this Court in *Pennsylvania R. Co.* v. *Public Utilities Commission,* 298 U. S. 170, which, with other similar cases, is much relied upon by appellant here (Br. 18–21).

The *Valvoline* case likewise establishes that the present statutory language has the same meaning as the original provision of the Hepburn Act of June 29, 1906, 34 Stat. 584, which was construed in *The Pipe Line Cases,* 234 U. S. 548, 559. As originally enacted, the provision subjecting pipe lines to the Act read as follows:

> That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, *who shall be considered and held to be common carriers within the meaning and purpose of this Act,* and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad * * *.
>
> The term "common carrier" as used in this Act shall include express companies

and sleeping car companies. [Hepburn Act of June 29, 1906, 34 Stat. 584; italics supplied.]

The language of the Hepburn Act was construed in *The Pipe Line Cases*, 234 U. S. 548, 559–60, as follows:

> The provisions of the act are to apply to any person engaged in the transportation of oil by means of pipe lines. The words "who shall be considered and held to be common carriers within the meaning and purpose of this act" obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such.[3]

It will be noticed that the provisions of the Interstate Commerce Act as amended by the Hepburn Act and construed in *The Pipe Line Cases*, applied to "any corporation or any person or persons" engaged in the transportation of oil or

[3] The ambiguity necessitating this judicial interpretation of the words of the Act was due to the fact that the House conferees, at the second conference, insisted upon accepting the original Senate amendment containing this wording. The Senate conferees were thus powerless to prevent the adoption of this version, although at the first conference they had agreed to a change making the meaning clear. 40 Cong. Rec. 9101–9102.

other commodity (except water and natural or artificial gas) by means of pipe lines. The law at that time did not contain the expression "pipe-line companies." Those words first appeared in the language adopted in 1920. But the meaning of the Act remained unchanged, and appellant cannot escape from the clear terms of the earlier version by reason of any ambiguity with respect to the meaning of the term "pipe-line companies." However, no ambiguity exists. Appellant, owning and operating an interstate pipe line, is undoubtedly a pipe-line company.[4] This is obvious from the plain meaning of the language used, even apart from the authoritative determination in the *Valvoline* case to the effect that the present statute has the same meaning as the earlier version, and, in *The Pipe Line Cases*, to the effect that the earlier version included any person engaged in transportation by means of pipe lines.

Appellant's contention (Br. 32–36) that it is not a pipe-line company because it is also engaged in the refining business is untenable. The same view could as well have been taken in the *Valvoline* case (R. 944–945) and with respect to some other oil companies in *The Pipe Line Cases* (R. 907) but was rejected on both occasions.

[4] In the *Valvoline* case, the Court found it necessary to do no more than summarily state that "There is no controversy over whether appellant is an interstate pipe line company. Obviously it is." 308 U. S. 141, 144.

The legislative history of the Hepburn Act supports the judicial construction put upon it, and leaves no doubt that appellant's view that the statute applies only to those engaged in transportation "for others" (Br. 9–30) is an erroneous one.[5] Cf. *United States* v. *Simpson*, 252 U. S. 465, 466–467. The provision relating to pipe lines was offered as an amendment by Senator Lodge of Massachusetts on May 4, 1906 (40 Cong. Rec. 6361). Senator Foraker, of Ohio, thereupon stated (40 Cong. Rec. 6361):

> I do not want to make any opposition to the Senator's amendment, but it occurs to me that the amendment ought to be further amended, so as to provide that it shall apply only to pipe lines operated for the public. I do not understand how you would compel a man who has a private pipe line of his own to become a common carrier. * * * I think such a limitation ought to be put in the Senator's amendment by an amendment to the amendment that it shall apply to all pipe lines that are carrying for the public, and not to private pipe lines that an individual or a single corporation may have laid down and put into operation for its own benefit.

[5] In the Commission's report in the proceeding out of which *The Pipe Line Cases* arose, *In the Matter of Pipe Lines*, 24 I. C. C. 1, 4–6, there is a good discussion of the legislative history, to which the Commerce Court also referred. See *Prairie Oil & Gas Co.* v. *United States*, 204 Fed. 798, 806.

To this Senator Nelson of Minnesota replied that (40 Cong. Rec. 6365):

> if that amendment is adopted it will practically nullify the provision, because every one of these pipe lines can say "we refuse to do business for the public."

Senator Lodge emphasized that (40 Cong. Rec. 6365):

> the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come under this rule, will, as the Senator from Minnesota [Mr. Nelson] says, absolutely destroy the value of my amendment.

After the Lodge amendment had been agreed to in Committee of the Whole (40 Cong. Rec. 6373), it was debated in the Senate (40 Cong. Rec. 6953, *et seq.*) and Senator Foraker again urged the insertion of "for the public," "for hire," "for compensation," or other similar terms. 40 Cong. Rec. 6999–7000. Senator Lodge vigorously opposed such modification of the wording, and declared that such a limitation would absolutely destroy the effectiveness of the proposed legislation. He said (40 Cong Rec. 7000):

> If you put in the words "transportation for hire" or "transportation for the public" you absolutely destroy this amendment so far as its effectiveness is concerned. The method of getting the oil is,

> as a rule, that the Standard Oil Company or the Pure Oil Company, which are the two great carriers of oil, buy it of the well owner and carry it, and they would immediately say they were not carrying for the public; that they were carrying for themselves. That is the reason why the word "public" or "transportation for hire" put in there would immediately wreck this amendment. * * * if you put in the words "for the public," after "transportation," you practically kill the amendment.[8]

Again, during debate on the second conference report, Senator Foraker pointed out that the provision which had been adopted by the Senate made all pipe lines common carriers (40 Cong. Rec. 9107), and referred to his repeated efforts to obtain amendments, which the Senate had refused to adopt (40 Cong. Rec. 9255). There was general agreement, both among supporters and opponents of the pipe line provision, as to what it was intended to accomplish, although Senator Tillman, who was in charge of the measure in the Senate, feared that the words used might have to be clarified by litigation (40 Cong. Rec. 7005, 7009, 9101–9103, 9105). See *supra*, note 3, p. 14. This Court, in the *Pipe Line* and *Valvoline* cases, has supplied that clarification.

B. *Appellant falls within the rule of the* Valvoline *case and not that of the* Uncle Sam *case.*—

[8] See also 40 Cong. Rec. 7001–7002.

Appellant relies chiefly (Br. 15–16) upon what this Court said with respect to the Uncle Sam Oil Company in *The Pipe Line Cases*, 234 U. S. 548, 561–562:

> There remains to be considered only the Uncle Sam Oil Company. This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his home. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end. In that case the decree will be affirmed. In the others the decree will be reversed.

Discussing this passage, Mr. Justice Reed said in the *Valvoline* case, 308 U. S. 141, 146:

> The appellant relies upon the *Pipe Line Cases* to show that the present act does not cover a pipe line transporting oil for its own refining purposes only. The discussion referred to is that concerning the Uncle Sam Oil Company. But that com-

> pany's pipe line was used for the "sole purpose of conducting oil from its own wells to its own refinery." This was held not to be transportation under the Act. Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline.

It is plain that appellant's operations do not fall within the terms of the exception described in the case of the Uncle Sam Oil Company. It will be noted that the situation covered by the exception exists only when a company is drawing oil from its own wells, to its own refinery, and for its own use. When these circumstances exist, this Court observed (234 U. S. at 562), the transportation will be regarded as "being merely an incident to use at the end."

None of these requirements is met by appellant. Its pipe line does not draw oil from its own wells or to its own refinery.[7] Nor does appellant transport petroleum products "for its own use." It transports them for sale to the public. The products it transports through its pipe line are not "for its own refining purposes only." Cf. *Valvoline* case, 308 U. S. 141, 146. Indeed, appellant transports products through its pipe line only "after preparation for market." Cf. *Valvoline*

[7] Plaintiff's pipe line is not a "crude oil" pipe line, extending from the wells to the refinery, but a "products" pipe line extending from the refinery to the pipe-line terminals.

case, 308 U. S. 141, 143. The shipments made by appellant were not for use in the refining process.* They were for sale on the market of a completed product.

In the *Uncle Sam* case the production, transportation, and consumption of the raw materials (crude oil) constituted successive stages in a single, uncompleted manufacturing process. There was no dealing with the public, either as buyer or seller. There was no transportation of a finished product. There was no sale to the public, in interstate commerce, of the commodity transported by pipe line.

Appellant's pipe line, on the other hand, transports finished products which are moving to market in the course of interstate trade and com-

* Cf. R. 948. The distinction between transportation for use in manufacturing and for sale to others was referred to during the debate in the Senate. Discussing the steel and pottery companies owning pipe lines bringing gas from their wells in another state "for the sole purpose of manufacturing in their own factories," Senator Bacon said (40 Cong. Rec. 7004–7005):

"I say that if the pipe line is exclusively the property of the manufactory using the gas, and if they only use the gas which they themselves produce in West Virginia, they can in no sense be called a common carrier. They are not serving the public in any particular. But if they are buying gas in West Virginia and transporting it to Pennsylvania and selling it to others, they are common carriers, and we have to frame the bill so as to meet all cases. If it is entirely a private enterprise, in which the production and the transportation and the use in manufacture are solely the act of one industry or enterprise, it does not fall under the provisions of this bill. It does not reach such a case at all."

merce. In the case of "contract" sales, the destination of the products is known prior to the interstate movement by pipe line (R. 409, 417). In the case of other sales, the petroleum products are shipped in response to a substantial and continuing demand, of such magnitude that at its peak it exceeds the capacity of the pipe line for contemporaneous delivery and requires the accumulation in storage of products shipped in advance and held in readiness to fill orders (R. 207–208, 210). Appellant's activities in selling and distributing petroleum products obviously constitute engaging in interstate commerce, for appellant sells and distributes products transported by the pipe line to purchasers located in States other than those in which its refinery and pipe-line terminals are situated (R. 206, 245). The interstate transportation of such products by pipe line for the purpose of distribution in such commerce must be regarded as a part of the through movement in interstate commerce beginning at the refinery and ending at the purchaser's place of business. Cf. *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 567–569. The transportation furnished by appellant's pipe line, therefore, is part of, or incident to, the sale and distribution of petroleum products in interstate commerce; and not, as in the *Uncle Sam* case, merely incident to the refining of the Uncle Sam Company's own oil, such "use at the end" of the pipe line not being commerce.

Additional light is shed on the meaning of the language used in the *Uncle Sam* case by reference to a similar passage in *Federal Club* v. *National League,* 259 U. S. 200, 208–209, where Mr. Justice Holmes, speaking for the Court, said:

> The business is giving exhibitions of base ball, which are purely state affairs. It is true that, in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and States. But the fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business. According to the distinction insisted upon in *Hooper* v. *California,* 155 U. S. 648, 655, the transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words.

In other words, if pipe-line transportation is incident to an activity which is not deemed to be commerce (such as manufacturing), then the physical transportation is not regarded as being subject to the Interstate Commerce Act. But on the other hand, it follows that if the pipe-line transportation is incident to an activity which is obviously interstate commerce (such as the marketing and sale of petroleum products among

the several States, in which appellant is admittedly engaged), then the transportation is subject to the pipe-line provisions of the Act.

Moreover, in the *Uncle Sam* case, the market price of oil was the same at Bartlesville and Cherryvale, the two termini of the Uncle Sam Oil Company's pipe line (R. 572, 684). Appellant's sale price at the product's destination, however, differs from its sale price at the Enid refinery. Indeed, the difference is meticulously computed and separately stated in billing the purchaser (R. 212, 219–220, 383). Since the product transported and sold by appellant is identical, insofar as its nature or processing is concerned, at both ends of the pipe line, this difference in value or market price at origin and at destination is attributable entirely to transportation, and is in fact calculated in terms of rail freight rates. It is idle for appellant, which furnishes part of such transportation, and collects a specific charge therefor, to contend that this amount paid by the purchaser is not a charge made for transportation and not one which operates to compensate it for transporting the product from Enid through the pipe line to the respective terminals. The fact that other competing oil companies employ the same system of pricing their products (R. 50) does not tend in any degree to show that appellant's charges do not represent compensation for transportation. Cf. Appellant's Br. 55.

With regard to appellant's method of selling and transporting its petroleum products, the Commission found that: "The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe line terminal" (R. 59), and that "Champlin is willing to sell its products to any part of the consuming public that can avail itself of the Champlin's facilities, provided the purchaser will agree to pay to the Champlin, under contract or spot sales, the so-called differential as compensation to the Champlin for transporting the product from Enid through the pipe line to the respective terminals," such differential being added to the Enid price of the product "in the sale of all products transported through the pipe line". (R. 66).*

Appellant cannot defeat the applicability of the regulatory statute by making sales f. o. b. purchaser's place of business or at the pipe-line terminal, instead of f. o. b. Enid refinery. The Interstate Commerce Act is not to be thwarted by technicalities with respect to the time and place where title passes. *The Pipe Line Cases*, 234 U. S. 548, 560; *Rearick* v. *Pennsylvania*, 203 U. S. 507, 512. Formalities regarding consummation of the sale cannot be utilized as the source of an advantage which appellant clearly could not en-

* This finding is supported by uncontradicted evidence of the most clear and convincing character. See R. 212, 215, 254, 255, 257, 262, and Exhibits 9 through 13 (R. 301–379).

joy if the same products, transported in the same manner, had in legal contemplation come into the ownership and possession of the purchaser at the Enid refinery prior to transportation through the pipe line. It was expressly held in *The Pipe Line Cases* (234 U. S. 548, 560), that the application of the Act could not be circumvented by the artifice of requiring that transfer of title take place prior to the commencement of transportation over the pipe line. Similarly it would seem clear that appellant should not be permitted to defeat the applicability of the Act by requiring that transfer of title take place only after the transportation by pipe line has been completed.

In *The Pipe Line Cases*, the companies involved "imposed as a condition to the carriage a sale to themselves" before the transportation commenced. This Court held that it would be "a sacrifice of fact to form" to exempt them on that account from compliance with the Act (234 U. S., at 560). The same would be true here if appellant were permitted to obtain exemption from the regulatory statute by the device of imposing, as a condition to the transportation by means of its pipe line, a sale to be consummated upon completion of the transportation.

In *Valvoline Oil Company* v. *United States*, 308 U. S. 141, this Court held that a company transporting, by pipe line to its refinery, crude oil which it had purchased from numerous producers and which it owned at the time of shipment,

was subject to the provisions of Section 19a of the Interstate Commerce Act. That decision is controlling in the case at bar. The only distinction between the two situations is that appellant is transporting petroleum products from its refinery to market for sale, instead of crude oil to its refinery after purchase. It is submitted that this distinction is productive of no difference in the legal result, and that in this case the result follows *a fortiori*, for a company transporting crude oil might much more plausibly assert that what it transported was simply raw material for its own use at its refinery than appellant could claim that finished products moving to the market were destined for its own use. The fact that the commodity transported is refined petroleum products instead of crude oil is, in itself, obviously immaterial. The statutory language is applicable to "oil or other commodity," with the exception (not pertinent here) of water and of natural or artificial gas.

It is equally clear that in appellant's operations, as in those of the Valvoline Company, the pipe-line transportation performed is an essential element in a course of business which involves dealing with the public. It would be artificial to draw a distinction because appellant is selling to the public, instead of purchasing from the public as Valvoline did. Purchasers to whom the pipeline company sells, as well as the sellers from

whom it buys, are entitled to the benefits afforded by the statutory provisions regulating transportation by pipe line.

C. *Appellant cannot enjoy the benefits but disclaim the burdens of common carrier status.*—We believe that the statute authorizes the entry of the order here involved for the reasons heretofore stated. If it be deemed relevant, however, it should be noted that appellant, as beneficiary of the exercise and enjoyment of some of the privileges of a common carrier in the common law sense, cannot properly complain if corresponding obligations are placed upon it. *Pierce Oil Corporation* v. *Phoenix Refining Company*, 259 U. S. 125, 128. Its corporate charter authorizes it to transport petroleum (R. 427), and in the construction of its pipe-line facilities the right of eminent domain was claimed and exercised.[10] While it may be technically true, as the Commission found (R. 60), that appellant itself has never exercised the power of eminent domain in connection with its pipe line, nevertheless appellant enjoyed the potential right to do so, and, moreover, through its *alter ego* and wholly-owned subsidiary, the Cimarron Valley Pipe Line Company, appellant facilitated construction of the pipe line by claiming the privileges of common carrier status.

[10] These circumstances were regarded as indicia of common carrier status in *Producers Transportation Co.* v. *Railroad Commission*, 251 U. S. 228, 231.

The line was built into and through Kansas under the authority of a certificate issued, on February 23, 1935, by the State Corporation Commission reciting that "public convenience will be promoted" by permitting appellant's instrumentality Cimarron to "transact the business of a common carrier" for the construction, maintenance, and operation of "a pipe line for the transportation of petroleum and its products." That certificate (R. 431) was issued after a hearing at which the secretary of appellant's subsidiary stated that, if construction were authorized, the line would file tariffs and submit itself to all the obligations of a common carrier (R. 268). Moreover, appellant's subsidiary instituted eminent domain proceedings in Kansas to condemn land needed to construct the pipe line (R. 200, 273–275). In each of such suits it claimed the status of "a corporation * * * with authority to transact business as a common carrier and to exercise the right of eminent domain in the States of Oklahoma and Kansas" (R. 274). These suits were later dismissed (R. 176, 200, 277–80); but the record does not disclose whether the owners of this land were ever notified that appellant's counsel had concluded that its subsidiary should relinquish and disclaim its common carrier status in Kansas. The fact that the property was acquired by settlement of the pending suits, rather than by consum-

mation of the eminent domain proceedings, is immaterial under "the rule, that settlement by an eminent domainer, with one whose property has been appropriated, is equivalent to the full and complete exercise of the power of eminent domain." *Pennsylvania Railroad* v. *Sagamore Coal Company*, 281 Pa. 233, 243.

Appellant's pipe line was continued into Iowa under a permit issued to appellant itself on March 15, 1940, by the Iowa State Commerce Commission authorizing the exercise of the right of eminent domain (R. 481–482). On October 7, 1941, appellant requested that this permit be amended, stating that it had not exercised the right of eminent domain and that it did not wish to be considered a common carrier (R. 483). The construction of the pipe line had been completed, however, before the permit was reissued on October 13, 1941 (R. 169, 191, 485); and the new Iowa permit also contained provisions authorizing appellant to use the property of other owners (R. 485). While no condemnation suits were brought in Iowa, it is a reasonable supposition that the authority to exercise the right of eminent domain in Iowa, which appellant enjoyed for over a year and a half, as well as the pending suits in Kansas, facilitated the purchase of the needed lands at prices favorable to appellant.

II

THE ORDER VIOLATED NO CONSTITUTIONAL RIGHT OF APPELLANT

Appellant has embarked upon a broad attack on the constitutional validity of the Interstate Commerce Act, claiming, among other things, that Congress may not subject it, a private carrier, to the obligations of a common carrier as the term is understood at common law (Br. 40–60). But the only order directed to appellant is one requiring information useful for purposes of valuation, and the validity of this type of order as well as its separability from other provisions of the Act was aptly put, with equal relevance here, in *Valvoline Oil Co.* v. *United States*, 308 U. S. 141. It was there said (*id.* at 146–147):

> Appellant presses its argument beyond the question whether it comes under the Act. If it does, it urges, the Act is in violation of the due process clause in that by the involuntary change of status from private to common carrier its property is taken. It looks upon the various regulatory provisions of the Interstate Commerce Act as inseparable from the valuation provisions of § 19a (a) and (e). The losses feared, from present or future legislation other than the valuation provisions, may never occur. The data required by the present order may never be used to fix rates. No such information as to other pipe lines has been so used. Publicity alone may give

> effective remedy to abuses, if any there be. This legislation was intended to free interstate commerce in oil from practices believed to be detrimental, and in that connection accessibility of valuation information to the Congress is essential. Its separate significance being apparent, we confine ourselves to § 19a (a) and (e). The constitutionality of such requirements was settled by the *Pipe Line Cases* and we see nothing that excepts appellant from their effect. The smallness of the operation is immaterial.

In any event, it cannot seriously be contended that the provisions of the Act are unconstitutional as applied to appellant. Appellant's pipe line was not constructed until after 1935 (R. 169, 191), long after the enactment of the original pipe-line provision in 1906 and its amendment in 1920. And in *The Pipe Line Cases*, 234 U. S. 548, 561, involving existing pipe lines, it was expressly stated that "So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid." Had the Court, in *The Pipe Line Cases*, intended to refer only to "future" pipe lines which were, in substance, if not in form, common carriers in the common-law sense (Appellant's Br. 44–52), it is clear that this language would have been superfluous. Hence there can be no question as to the constitutionality of the Act as applied to appellant.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decree of the district court should be affirmed.

J. HOWARD MCGRATH,
Solicitor General,

WENDELL BERGE,
Assistant Attorney General.

EDWARD DUMBAULD,
W. B. WATSON SNYDER,
Special Assistants to the Attorney General.

DANIEL W. KNOWLTON,
Chief Counsel,

NELSON THOMAS,
Attorney,
Interstate Commerce Commission.

NOVEMBER 1945.

APPENDIX.

The pertinent provisions of the Interstate Commerce Act, as amended, 49 U. S. C. 1, 19a, are as follows:

SEC. 1. (1) That the provisions of this part shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only insofar as such transportation takes place within the United States.

(2) The provisions of this part shall also apply to such transportation of passengers and property, but only in so far as such transportation takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid;

(b) or

(c) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this part except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(3) (a) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier." The term "railroad" as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property.

The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. The term "person" as used in this part includes an individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes a trustee, receiver, assignee, or personal representative thereof.

* * * * *

SEC. 19a (a). That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part, except any street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation; but the Commission may in its discretion investigate, ascertain, and report the value of the property owned or used by any such electric railway subject to the provisions of this part whenever in its judgment such action is desirable in the public interest. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners, who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall, subject to the exception

hereinbefore provided for in the case of electric railways, make an inventory which shall list the property of every common carrier subject to the provisions of this part in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

* * * * * *

(c) Except as herein otherwise provided, the Commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value, and such investigation shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required.

(d) Such investigation shall be commenced within sixty days after approval of this part and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

(e) Every common carrier subject to the provisions of this part shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers.

State of Oklahoma, County of Tulsa—ss.

Harry O. Glasser of lawful age, being first duly sworn upon oath states, that he has prepared the foregoing motion and has personal knowledge of the matters therein stated, and that said motion is not filed for vexatious delay.

HARRY O. GLASSER.

Subscribed and sworn to this 9th day of October, 1945.

(Seal)

CONSTANCE TAYLOR,
Notary Public.

My Commission expires:
Oct. 29, 1945.

or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right of way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section twenty of this part shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

* * * * *

(k) The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with all the requirements of this section and in the manner prescribed by the Commission such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in section sixteen of this Act to regulate commerce.

(l) That the district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this section by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this section.

U. S. GOVERNMENT PRINTING OFFICE: 1949

'46 Term, #21

Insert in Brief of United States.

October 24, 1946

Honorable Charles Elmore Cropley
Clerk, United States Supreme Court
Washington, D. C.

Re: No. 21, Champlin Refining Company
v. United States

Dear Mr. Cropley:

In response to requests made from the bench during argument in the above case, I submit the following references relative to matters which were not included in the Government's brief. Eight additional copies of this letter are enclosed and a copy has been sent to counsel for the appellant.

1. The legislative history of the phrase "or other commodity" in Section 1 (1) of the Interstate Commerce Act. - The Senate rejected by a vote of 22 to 33 a proposal by Senator Carter of Montana to strike out the words "or other commodity." 40 Cong. Rec. 6368-6370.

The legislative history shows also that several pipe lines for other commodities than crude oil were known to Congress at the time of passage of the Hepburn Act. Senator Long quoted a statement that several independent refining companies have built pipe lines for the transportation of their own "products" to market and that Standard Oil has expended many millions of dollars in the construction of pipe lines for the private transportation of crude "and refined" oil. 40 Cong. Rec. 9256.

The legislative history makes it clear also that not only will owners but the public at the other end of the pipe line were intended by Congress to be within the protection of the pipe line legislation. Not only will owners, but independent refiners as well, suffered from control of pipe lines by the powerful oil companies owning them. Senator Lodge referred to cases "where an independent refinery has been deprived of its supply of oil because it would not agree to the prices of the pipe lines." 40 Cong. Rec. 6366, R. 717. Senator Lodge also refers to many letters from independent refiners in support of the amendment. 40 Cong. Rec. 6365, R. 755.

2. The facts with reference to Cimarron. - The capitalization of Cimarron was only $350,000.00 (Original transcript on file with this Court, fol. 883), whereas according to Exhibit X (Champlin's own estimate of pipe line costs, as of December 31, 1940), the pipe line property cost $3,198,028.66 (R. 169-170, 49). The value of pipe line property in Iowa alone was $948,736.65 (Original transcript on file with this Court, fol. 977).

Champlin advanced to Cimarron the funds for construction of the pipe line involved in this case, and later cancelled the charges on its books (R. 177). Champlin used Cimarron as its instrumentality for constructing the pipe line in Kansas (R. 198-199).

Cimarron serves wells of others (R. 89, 167). Champlin produces only 10% of its own crude oil, so that 90% is purchased from others (R. 210).

In fairness it should be said that the figure of 10% was an estimate of the witness L. A. Snyder; and that in Exhibit No. 1320 before the Temporary National Economic Committee, a public document judicially noticeable, Champlin submitted the following statistics for the year 1938:

Crude oil produced	2,125,600 barrels
Purchased	2,671,256 "
Sold to others	1,381,657 "
Gathering lines moved	4,236,494 "
Proportion of crude oil transported for own use	60.61%

3. The Ueale Gas case in the legislative history of the Transportation Act of 1920. - Inquiry of the Interstate Commerce Commission and our own investigation reveals no evidence of any mention of the Ueale Gas case or the rule of that case in any of the recommendations made by the Commission to Congress with respect to the legislation which became the Transportation Act of 1920.

Sincerely yours,

J. Howard McGrath,
Solicitor General.

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CLERK

No. 21

In the Supreme Court of the United States

October Term, 1945.

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION.

Appeal from the District Court of the United States for the Western District of Oklahoma.

MOTION FOR CONTINUANCE.

HARRY O. GLASSER,
DAN MOODY,
Counsel for Champlin Refining Company.

SUPREME COURT OF THE UNITED STATES.

October Term, 1945.

No. 75

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION.

Appeal from the District Court of the United States for the Western District of Oklahoma.

MOTION FOR CONTINUANCE.

Comes now the Appellant, Champlin Refining Company, and respectfully moves the Court that this cause be continued for oral argument until it may be heard by the full membership of the Court; and in support of said motion, states:

That said case is of serious consequence to appellant and in the event it be determined by an equal division of the Court, the finality of such result would be doubtful.

Wherefore, Appellant prays that said cause be continued for oral argument until the case may be heard by the full membership of the Court.

CHAMPLIN REFINING COMPANY,
Appellant,
HARRY O. GLASSER,
DAN MOODY,
Counsel.

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CLERK

No. 76 21

In the Supreme Court of the United States

October Term, 1945.

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION.

Appeal from the District Court of the United States for the Western District of Oklahoma.

Motion to Transfer from Summary to Regular Docket.

HARRY O. GLASSER,
DAN MOODY,
Counsel for Champlin Refining Company.

SUPREME COURT OF THE UNITED STATES.

October Term, 1945.

No. 75

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

THE UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION.

Appeal from the District Court of the United States for the Western District of Oklahoma.

MOTION TO TRANSFER FROM SUMMARY TO REGULAR DOCKET.

The Champlin Refining Company, appellant, respectfully moves the court to transfer this cause from the summary docket to the regular docket, and in support thereof and as reasons therefor, shows:

I.

The importance of the law questions involved in this case and the implications of the authorities bearing upon such questions, together with the extended volume of the record as appears from the hereinafter stated facts, are such that the case cannot be fairly presented within the time allowed for oral argument in cases upon the summary docket.

II.

That injustice was done appellant by the rulings and order of the Interstate Commerce Commission and by the judgment of the majority of the trial court, all of which appears from the recitation of the following facts:

(a) On April 27, 1936, after the completion in 1935, of the first unit of its products pipe line, M. O. Lorenz, Director of Statistics of the Interstate Commerce Commission, advised (R., Vol. I, p. 25) appellant that its pipe line operations were not subject to the jurisdiction of the Interstate Commerce Commission. The matter so rested until 1939 (R., Vol. I, p. 26) when correspondence was renewed by the commission, which was continued (R., Vol. I, pp. 27-42, incl.) until February 7, 1941, when a divided division of the Commission (SPLAWN dissenting) determined that,

> "* * * the bureau of valuation proceed against either the Champlin Refining Company or the Standard Oil Company of Indiana in such manner as will bring before the Commission the question of jurisdiction under Section 19a for the purposes of a *test* case * * *." (R., Vol. II, p. 526)

Later, by a divided vote, (Chairman Patterson and Commissioner Porter dissenting) the Commission finally held that appellant in its products pipe line operations is a common carrier and as such, subject to the Interstate Commerce Act and the jurisdiction of the Commission (R., Vol. II, pp. 537, 546).

(b) Appellant, being aggrieved by such action, was compelled to institute this suit, and upon trial in the District Court for the western District of Oklahoma, was determined (R., Vol. I, pp. 77-93) by a divided court (District Judge VAUGHT dissenting) to be a "statutory common carrier" under the Interstate Commerce Act, and thereupon an order was entered by the majority of such specially constituted court (R., Vol. I, pp. 112-113) dismissing ap-

pellant's petition for injunction, to restrain the enforcement of the complained of orders entered by the Commission against appellant. Significantly, as hereinafter said, the majority of the trial court did not find appellant to be a common carrier in fact.

The ruling of the majority of the Commission and of the majority of the trial court that appellant is a statutory common carrier, is obviously in conflict with the construction which this Court has placed upon the pipe line clause of the Interstate Commerce Act in *The Pipe Line Cases*, 234 U. S. 548, and in *Valvoline Oil Company* v. *United States*, 308 U. S. 141. Appellant's contention that such conflict exists, finds support in the disagreement between the members of the Commission and between the members of the trial court concerning appellant's status, and is also supported by a statement made by Circuit Judge MURRAH (who concurred in the majority opinion of the trial court) when arguments were heard on the motion for rehearing, which statement is as follows (R., Vol. I, pp. 134-135):

> "I certainly want to say so far as I am concerned that as far as the interpretation or construction of the statutory language is concerned, I have no difficulty in finding that Congress intended to make the Champlin Pipe Line Company a common carrier within the meaning of this statute. I agree with you that the Supreme Court has not gone that far. There isn't any question about it as far as I am concerned. They have refused to go that far. I will put it that way. I say they have refused to do so. I don't know. I can't tell from reading those decisions whether they thought Congress could not do it or Congress did not intend to do it, but I am perfectly willing for them to clear it up, but it does worry me, the question of whether or not we are giving an unconstitutional construction to that. We are not unmindful of the force of our decision."

III.

The record shows without dispute in the testimony, that appellant's pipe line, extending from appellant's refinery at Enid, Okla., to appellant's storage tanks near Rock Rapids, Iowa, with terminals and storage tanks at Hutchison, Kan., and Superior, Neb., is used *exclusively* to transport refined products wholly manufactured by appellant in its refinery at Enid, Okla., to its storage tanks at the terminals on its pipe line; that appellant has never purchased from anyone, any products transported or to be transported through such pipe line, nor has it transported, offered to transport or been asked to transport any products belonging to any other company or person; that its pipe line does not connect with any other pipe line, but only with the storage tanks at the three terminals of the pipe line; that there is no point at which any petroleum product can be put into the line other than at the Enid refinery; that all sales of such products transported through such products pipe line are solely made from such storage tanks at such terminals; that delivery of the products at the three terminal points is made from the storage tanks at such terminals by means of truck racks or railroad tank-car racks and is not made directly from the pipe line in any instance; that no tariffs have been filed with the Interstate Commerce Commission or with any State Commission or regulatory body; that the right of eminent domain has never been exercised by appellant in connection with its pipe line; that the products while in transit through such products pipe line, and until they are sold from the storage tanks at the pipe line terminals, remain at all times in the sole ownership of appellant; that appellant has never made exchanges of products in the operation of its pipe line. (R., Vol. I, pp. 110-11, 209, 236; R., Vol. II, p. 532; 49 Val. Rep. 467.)

IV.

That to convert appellant's pipe line into a common carrier, will require conversion construction at great expense, before such line could render service to the public.

V.

To affirm the decision of the majority of the trial court will preclude the operation of a private interstate pipe line or railroad for any purpose whatsoever and would, therefore, have the effect to prohibit any person building a pipe line or railroad across state lines for the private use of the owner thereof.

Such far-reaching consequences should not be invoked against this appellant upon the summary docket of this Court.

Furthermore, at the time this case was ordered docketed on the summary docket, the Court did not make any notation of the questions upon which the Court desired argument, with the result that counsel for appellant have been compelled to prepare its brief upon all of the questions involved in the case, and are now unable to anticipate in preparation for oral argument the matters to which the argument will be limited upon a summary consideration thereof.

VI.

The ultimate questions presented by this appeal are serious and substantial and the answer to them will determine whether a refiner of crude oil products may, without invoking the exercise of the right of eminent domain, but solely by the use of privately-obtained right-of-way, construct across state lines, a private products pipe line as a plant facility for the moving of such refinery products only, out of refinery operating tanks, into storage tanks located in other states, for future sale by such refiner from such

storage tanks only, without thereby dedicating such pipe line to the use of its competitors as a common carrier for hire.

The trial court did not hold Champlin to be a common carrier in fact. It held it to be a "statutory common carrier," and as such engaged in transportation within the meaning of the Interstate Commerce Act (R., Vol. I, pp. 83-84, 112-113).

Wherefore, appellant respectfully prays that the Court grant this motion and transfer the cause to the regular docket of the Court.

HARRY O. GLASSER,
DAN MOODY,
Counsel for Champlin Refining Company.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 75 21

CHAMPLIN REFINING COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

MOTION FOR EXTENSION OF TIME UPON ORAL ARGUMENT

HARRY O. GLASSER,
Enid, Oklahoma,
DAN MOODY,
Austin, Texas,
Attorneys for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 75

CHAMPLIN REFINING COMPANY,

Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

MOTION FOR EXTENSION OF TIME UPON ORAL ARGUMENT

Comes now the Champlin Refining Company and respectfully asks that counsel be granted an extension of forty-five minutes time upon oral argument, for each side of the controversy, for the necessary and required accurate and proper presentation of their respective positions, and in support of such request states:

That the questions involved are not only determinative of the economic survival of the Champlin Refining Com-

pany, but are of extreme importance as well to the oil refining industry generally.

It is necessary that the *Uncle Sam* case (transcript and briefs, R. pp. 568-879 incl.) be fully reviewed for the comparison in fact that exists between that case and the Champlin case, and it is equally important that the *Valvoline* case (briefs, R. pp. 889-956 incl.) be reviewed at length because it is not in fact like the Champlin case.

It is also important that some three or four questions asked by members of the Court upon the former argument, which were then neither fully nor clearly answered for the lack of time within which to do so, should now be fully and accurately discussed and answered.

The factual record is voluminous and involved, and the operation of a products pipe line is technical in comparison with the operation of a "crude oil" pipe line, so that an extended discussion of the facts involved is required in order that the case may be scrutinized in the manner in which its importance justifies.

WHEREFORE, the Champlin Refining Company prays that the order of the Court be entered extending the time for oral argument by an additional forty-five minutes upon each side, beyond the time allowed under the rule on the regular docket.

CHAMPLIN REFINING COMPANY,
Appellant,

By HARRY O. GLASSER,
DAN MOODY,
Its Attorneys.

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CHARLES ELMORE CROPLEY

No. 21

SUPREME COURT OF THE UNITED STATES

October Term, 1946

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

PETITION for REHEARING.

HARRY O. GLASSER,
DAN MOODY,
Attorneys for Petitioner.

TABLE OF CASES.

PAGE

Atlantic Coast Line v. Standard Oil Co., 275 U. S. 257, 72 L. ed. 270 ..... 1, 15

General Oil Co. v. Crain, 209 U. S. 211, 52 L. ed. 754 ..... 1, 15, 18, 19

Interstate Commerce Act, Section 19a 23, 24, 25

Interstate Commerce Commission v. Baltimore and Ohio Railroad Co., 145 U. S. 263 23

Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., 167 U. S. 479 23

National Surety Company v. Jarrett, et al., 95 W. Va. 420, 121 S. E. 291, 36 A. L. R. 1171 23

Pennsylvania R. R. v. Public Utilities Commission, 298 U. S. 170, 80 L. ed. 1130 ..... 1, 11, 12, 15, 17

Petroleum Rail Shippers Association v. Alton & Southern Railway, 243 I. C. C. 589 7

Pipe Line Cases, 234 U. S. 548, 58 L. ed. 1459 .. 2, 8, 10, 21, 22

Texas and Pacific Railway Co. v. Interstate Commerce Commission, 162 U. S. 197, 210 23

SUPREME COURT OF THE UNITED STATES,

October Term, 1946

No. 21

CHAMPLIN REFINING COMPANY, *Appellant,*

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

PETITION *for* REHEARING.

The Champlin Company complains of the opinion of the Court of November 18, 1946,

(*a*) for erroneous interpretation of uncontroverted facts, to be presently considered;

(*b*) for erroneous conclusions of law which will be noted *infra;*

(*c*) for the failure to note, or distinguish, controlling decisions of this court, viz: *Atlantic Coast Line* v. *Standard Oil Co.*, 275 U. S. 257, 72 L. ed. 270; *Pennsylvania R. R.* v. *Public Utilities Commission,* 298 U. S. 170, 80 L. ed. 1130; and *General Oil Co.* v. *Crain,* 209 U. S. 211, 52 L. ed. 754;

and,

(*d*) for the erroneous interpretation of the effect required to be given "to the use at the end" referred to by Mr. Justice HOLMES in the *Uncle Sam Company*

case in the *Pipe Line Cases*, 234 U. S. 548, 58 L. ed. 1459;

and respectfully prays that it be granted a rehearing upon the issues so erroneously determined adversely to it and that an oral argument be allowed upon such rehearing.

In support of this petition, it says:

(*a*) By the opinion of the Court, the Champlin Company will be required to file a "valuation report" for which there are no orders or forms available upon which a *private* carrier may file such report with the Commission. The Champlin Company will therefore be required and expected by the Commission to use forms prescribed by Valuation Orders No. 26 and No. 27, which are Exhibit 45 (R. Vol. II, pp. 486-508, incl.,) and Exhibit 46 (R. Vol. II, pp. 509-523, incl.).

An examination of these exhibits will reveal the requirements made thereby, to be wholly common carrier requirements, and as shown (R. Vol. II, p. 511), entail the use of the Uniform System of Accounts for common carrier pipe lines prescribed by the Commission, which, incidentally, the private pipe line carrier cannot use.

If the opinion of this Court is to stand, there should be some modification thereof, as to what form of valuation report the private pipe lines shall be required to file under the decision, because obviously the private pipe line cannot concede that it is a common carrier—which it is not—and unless the opinion of the Court be modified, its attempted enforcement can but result in an immediate appeal to the courts to be relieved of filing valuation reports in conformity with Orders No. 26 and No. 27, *supra*.

The members of the Court should examine Orders No. 26 and No. 27 (Exhibits 45 and 46, R. Vol. II, pp. 486-522, incl.,) to understand the difficulty with which the Champlin Company will be confronted in endeavoring to comply with the opinion of this Court, if it shall stand as written. In fact, it cannot be complied with, because a private pipe line

cannot use such forms, nor employ the system of accounting which is required, and the ultimate issue is obvious.

We are being directed to do an impossible thing: viz, retain our status as a private carrier, so that we may preserve our rights pointed out in the opinion of the Court, and at the same time file a "common carrier" valuation report and adopt the common carrier System of Uniform Accounts as prescribed by the Interstate Commerce Commission.

The effect of the opinion of the Court is to say that Section 19a is separable from the remainder of the Act, and that the Commission has power to require by Orders No. 26 and No. 27 (R. Vol. II, pp. 486-522, incl.,) the filing of "common carrier" valuation reports by every "private carrier" regardless of the nature or character of its operations. The Act does not lend itself to such holding and surely this Court does not intend to so say.

Before proceeding with a consideration of the points of error which we respectfully say are latent in the opinion of the Court, we think it necessary to say something of the background of this litigation, which has not heretofore been thought to be of importance, and has not received the mention that now becomes importantly necessary.

That as a result of voluminous correspondence and telegrams commencing on February 9, 1935 (R. Vol. I, pp. 14-40, incl.,) the Champlin Company was on May 15, 1941, ordered (R. Vol. I, p. 40) to prepare in duplicate and file with the Interstate Commerce Commission not later than September 1, 1941,

> "• • • *the original copy* of a complete inventory of the pipe line property of the Champlin Refining Company, except land, showing the quantities, units, classes, kinds, and condition thereof.
>
> "The inventory shall be made as of the date of valuation already set for the property, December 31, 1940, and shall conform with the enclosed instructions and sample notes.

"Kindly acknowledge receipt of this letter and enclosures.

"Yours very truly, Ernest J. Lewis, Director."

Further directions were given by the Commission and correspondence had (R. Vol. I, pp. 41-45, incl.,), which resulted on July 14, 1941, in a letter to the Commission (R. Vol. I, p. 45) which reads as follows:

"July 14, 1941.

"Mr. Ernest I. Lewis, Director, Bureau of Valuation, Interstate Commerce Commission, Washington, D. C.

"Dear Sir: Receipt is acknowledged of your letter of July 7th, addressed to Mr. Champlin.

"Within the next ten days we will have completed the preparation of all data available from our records and will promptly forward it to you.

Yours very truly,

Champlin Refining Co., G. E. Leverton."

On July 18, 1941, the Champlin Company forwarded to the Commission a full and complete *valuation report* of its products pipe line, in which report is contained in meticulous detail all information which the company possessed with regard to such pipe line investment. The report, however, was not made upon forms furnished by the Commission for *common carrier* use.

Exhibit 45 (R. Vol. II, pp. 486-509, incl.,) and Exhibit 46 (R. Vol. II, pp. 509-523, incl.,) are prints of the forms of valuation orders Nos. 26 and 27, which Champlin refused to use because, as examination thereof will reveal, there is constant admission throughout such forms that the user thereof is a *common carrier*.

The Champlin Company does not interpret the opinion of this Court to hold that it is a *common carrier* within the provisions of Section I of the Interstate Commerce Act, and it should not therefore be required to file valuation

reports wherein it must admit that it is a *common carrier* within the provisions of Section I of the Act.

The gross injustice which will be done this petitioner if required to so file such reports under such circumstances, is at once obvious.

The refusal of the company to act as its self-executioner at the time it tendered the valuation report identified as Exhibit X (R. Vol. I, p. 160) which by reason of its great volume was not printed (R. Vol. II, p. 961, item 26) as a part of the record, was fully justified. Such original report (tendered to the Commission) is in the office of the Clerk of this Court by transmittal from the District Court (R. Vol. I, p. 160), where it may be scrutinized by the members of the Court.

Ernest I. Lewis, Director of the Commission (R. Vol. I, p. 161) in his letter of July 22, 1941, said:

> "• • • • • • • • •
>
> "While the report which you have submitted is informative, it can in no sense be construed as a compliance with the valuation orders which have been served. We are, therefore, returning the report herewith, together with additional copies of Valuation Orders Nos. 26 and 27.
>
> "• • • • • • • • •"

The Champlin Company, as a result of the opinion of the Court, finds itself in the position of having already filed a valuation report such as the Court has said it should file, which is wholly unacceptable to the Commission because it does not confess "common carrier" status, which the Court has said does not exist. The decision of the Court now leaves us where we must file the report upon the forms of the Commission, which require the admission that we are a common carrier. This position of the Commission intensifies the merit of our contention that the "filing of tariffs" and qualifying "to receive competitors' products" (which are certain to destroy our business by depriving us

of our pipe line capacity which is so badly needed for seasonal protection of our hard earned market outlets) is now the next step for us, as it was for Valvoline (R. Vol. I, pp. 127-133, incl.,). See also, addition to Transcript (R., p. 966).

The petitioner most earnestly therefore prays that it may be absolved of filing any report, in which it is required to confess the legal status of a "common carrier."

Petitioner also says Congress did not and could not in 1906, have had in contemplation, or purpose, the regulation of products pipe lines as is unquestionably shown by Technical Bullein No. 517, which is here inserted in this petition:

U. S. DEPARTMENT OF COMMERCE
ROY D. CHAPIN, Secretary
BUREAU OF MINES
SCOTT TURNER, Director

Technical Paper 517

TRANSPORTATION OF GASOLINE BY PIPE LINE

BY
C. P. BOWIE

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1932

For sale by the Superintendent of Documents, Washington, D. C. - - - - Price 10 cents

TABLE 1.—*Motor-gasoline pipe lines in the United States (as of August, 1931)*

Name	Owned by—	Origin	Route or destination	Approximate length, miles	Diameter of pipe, inches	Daily maximum delivery, barrels	Refineries supplying gasoline			Remarks
							Name	Location	Daily capacity (crude), barrels	
Great Lakes Pipe Line Co.	Skelly Oil Co. Continental Oil Co. Barnsdall Oil Co. Mid-Continent Petroleum Co. Pure Oil Co. Phillips Pipe Line Co.	Oklahoma, Kansas	Kansas City, Mo. Omaha, Nebr. Des Moines, Iowa. St. Paul, Minn. Chicago, Ill. Milwaukee, Wis.	1,330	4, 6, 8	30,000	Continental Oil Co. do Barnsdall Oil Co. do Pure Oil Co. Phillips Petroleum Co. do Skelly Oil Co.	Ponca City, Okla. Sapulpa, Okla. Okmulgee, Okla. Barnsdall, Okla. Muskogee, Okla. Okmulgee, Okla. Kansas City, Mo. Eldorado, Kans. Bayonne, N. J.	30,000 10,000 11,000 5,000 12,000 5,000 5,000 23,000 88,000	Barges planned for Mississippi River, Missouri River, and Great Lakes.
Tuscarora Oil Co. (Ltd.)	Standard Oil Co. of Pennsylvania	Bayway, N. J.	Midland, Pa.	371	6, 8, 12	10,000	Standard Oil Co. of New Jersey do	Linden, N. J.	75,000	Barges on Ohio River.
Phillips Pipe Line Co.	Phillips Pipe Line Co.	Texas Panhandle	Wichita, Kans. Kansas City, Mo. St. Louis, Mo.	682	8	30,000	Phillips Petroleum Co.	Borger, Tex.	36,000	Refinery capacity to be increased. Will use barges on Mississippi and Ohio Rivers.
Magnolia Petroleum Co. Do.	Magnolia Petroleum Co. do.	Fort Worth, Tex. Luling, Tex.	Dallas, Tex. San Antonio, Tex.	31 49	3 3	2,000 2,000	Magnolia Petroleum Co. do	Fort Worth, Tex. Luling, Tex.	7,000 5,000	
Sun Pipe Line Co.	Sun Pipe Line Co.	Twin Oaks, Pa.	Columbia, Pa. Harrisburg, Pa. Pittsburgh, Pa. Akron, Ohio. Cleveland, Ohio. Allentown, Pa. Scranton, Pa. Binghamton, N. Y. Youngstown, Ohio. Cesina, Pa. Vanport, Pa. Syracuse, N. Y.	727	2, 3, 6, 8	15,000	Sun Oil Co. and others.	Marcus Hook, Pa.	35,000	Will eventually connect with New York barge canal at Syracuse.
Total				3,210		89,000				

Keystone Pipe Line Co.	Keystone Pipe Line Co.	Point Breeze, Philadelphia, Pa.	Reading, Pa. Mechanicsburg, Pa. Wilkes-Barre, Pa.	200	6, 8	20,000	Atlantic Refining Co.	Point Breeze, Philadelphia, Pa.	50,000	Proposed.
Ajax Pipe Line Co.	Standard Oil Co. of New Jersey. Standard Oil Co. of Ohio.	Glenn Pool, Okla.	Wood River, Ill.	400	10	45,000	Various	Vicinity Tulsa, Okla.	35,000	Has recently constructed two 10-inch lines for crude oil. Construction anticipates converting one line at later date into motor-gasoline carrier.

western districts, although there are numerous lines in the Rocky Mountain and Pacific coast districts handling natural gasoline. Table 1 gives detailed information concerning the lines. The Great Lakes Pipe Line Co. is owned jointly by six Mid-Continent companies, and the refineries of these various companies will supply the gasoline that is to be transported through the line. The total length of motor-gasoline lines now (August, 1931) in operation or under construction is 3,210 miles, and their total maximum delivery is 89,000 barrels a day. Construction has not begun on the Keystone pipe line. The Ajax Pipe Line Co. will not begin to transport motor gasoline through its system for some time.

In July, 1931, 2,900 miles of pipe line were actually being operated to distribute gasoline and motor fuel. Deliveries from these lines during July amounted to 1,270,000 barrels of motor fuel. During the 6-month period January to July, 1931, approximately 4,000,000 barrels of motor fuel was delivered to consumers by means of pipe lines.

According to Mockler,[1] several companies are now planning the construction of gasoline lines from strategic points at tidewater along the Atlantic coast of the United States to interior markets.

For several years plants producing natural gasoline in various oil fields of the United States have been pumping their product through short lines directly into the crude-oil transportation systems or through specially designed systems to refineries or convenient points along the railroads, where the gasoline is loaded into tank cars. In California there are several relatively long natural-gasoline lines. The Shell Oil Co. operates a 6-inch line about 100 miles long extending from a point near the city of Ventura to Wilmington in Los Angeles County and the Union Oil Co. of California, a 6-inch line 80 miles long from the Kettleman Hills field in the San Joaquin Valley to Avila, San Luis Obispo County. These lines are used exclusively for natural gasoline. The Associated Oil Co. has a 6-inch line 170 miles long from various San Joaquin Valley fields to Monterey and the Standard Oil Co. of California, a 10-inch line 70 miles long from Kettleman Hills to Morro, San Luis Obispo County. These lines are used intermittently for the transportation of natural gasoline. The latter company is now building an 8-inch line paralleling their 10-inch line, which is to be used exclusively for natural gasoline.

So far as the author is able to determine the first relatively long line for transporting natural gasoline was constructed in 1912 in Orange County, Calif., by the Pacific Gasoline Co. It was 2 inches in diameter and about 2 miles long and was used to transport natural gasoline from Brea Canyon to a loading rack near Brea.

In 1913 the Pinal Dome Oil Co. constructed a 2-inch pipe line 16 miles long to transport natural gasoline from the Santa Maria oil field, Santa Barbara County, Calif., to a refinery at Betteravia. This line was operated by gravity.

In 1914 the Union Oil Co. of California constructed a 2-inch natural-gasoline line about 30 miles long from Orcutt, Santa Barbara County, to Avila, San Luis Obispo County, Calif.

[1] Mockler, A. E., Plan Gasoline Lines Along East Coast: Oil and Gas Jour., vol. 29, Jan. 29, 1931, pp. 35, 166–167.

FIGURE 1.—Motor-gasoline pipe lines under construction or operating in the United States (August, 1931)

97340°—(Face p. 4.)

In 1915 The Peoples Natural Gas Co., of Pittsburgh, Pa., completed a 2-inch line 23 miles long. It was used to transport natural gasoline from the company's absorption plant at Brave, Green County, Pa., to the Pennsylvania Railroad at Marianna, Washington County. The pipe joints were screwed together, and extra-heavy long collars were used. It is believed that this was the first gasoline line constructed in the Pennsylvania fields.

According to Bureau of Mines reports,[6] the daily production of natural gasoline in California, as of August, 1931, was 1,768,000 gallons. A canvass made by the bureau shows that approximately 78.4 per cent of this amount was shipped from the plants by pipe line.

ACKNOWLEDGMENTS

The author is indebted to the following people for helpful information in the preparation of this paper: W. H. Stueve, of the Oklahoma Gas & Electric Co.; Turner White and A. B. Wardlaw, of the Texas Oil Co.; E. J. Lewis, of the Tuscarora Oil Co. (Ltd.); F. H. Hadley, of the Susquehanna Pipe Line Co.; E. R. Brown and R. H. Kinsloe, of the Magnolia Petroleum Co.; Harry Moreland, of the Great Lakes Pipe Line Co.; W. R. Layne, of the Byron Jackson Pump Co.; N. W. Thompson, Frank Young, and W. C. Roberts, of the Shell Oil Co.; Clyde Alexander, of the Phillips Petroleum Co.; A. H. Riney, of the Phillips Pipe Line Co.; J. W. Boyd, of the Philfuels Co.; H. T. Earl, A. S. Jones, N. H. Blend, and J. W. McCurdy, of the Tidewater-Associated Oil Co.; E. L. Adams, of the General Petroleum Corporation of California; R. J. Johnson, of the Ajax Pipe Line Co.; William Groundwater, of the Union Oil Co. of California; R. L. Ruby, of the Southern Pacific Co.; and H. H. Hall, of the Standard Oil Co. of California.

LOCATING PIPE LINE

In preparing the surveys for a pipe line the engineer should first make a reconnaissance of the country through which the proposed line is to pass to acquire a general knowledge of the topography so that he may select the most suitable route. He may gain such knowledge quickly and satisfactorily by means of an airplane[7] trip over the proposed route and later from a detailed study of a photographic map taken from the air. In excessively hilly country a trip on horseback may be well worth while. Ordinarily, however, such country should not be selected for pipe lines because, even though it offers the shortest route for the line, it may necessitate the building of expensive roads, which may cost more than the additional length of line required.

Old lake beds, where the soil contains a high percentage of alkaline salts, should also be avoided, where possible, as in such soils deterioration of the pipe from corrosion is very rapid.

Moreover, the engineer should consider the prospects of securing a suitable water supply for the pump stations, particularly in desert or semiarid country.

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[6] Knudsen, E. T., Statistical and Economic Surveys: California Petroleum Statement 113, Bureau of Mines, petroleum economics division, August, 1931, 8 pp.

[7] Ettel, L. T., Faults Undiscovered on the Ground Revealed by Aerial Maps: Oil Field Eng., vol. 5, January, 1929, pp. 24, 27, 64.

A route along the bank of a stream is seldom desirable, especially where the flow is torrential during the wet season. At times of high water such a stream may change its course, rapidly undermining and destroying sections of the pipe line. Detours from an otherwise desirable location may be necessary on account of inability to secure right of way; usually, however, this difficulty can be overcome by compromise or condemnation proceedings so that the engineer, in his preliminary work at least, will need to give such possibilities only passing consideration.

SURVEYING

When the tentative route has been chosen a transit line is run, which "ties in" all section corners, monuments marking land surveys, and all adjacent buildings or other structures. On this transit-line survey careful notation is made of intersections with streams, railroads, wagon roads, streets, fences, pipe lines, power lines, and all other crossings of the proposed route. Stakes are set along the transit line at intervals of 100 feet or less, and on each stake is marked with crayon the engineering station that it designates.

Following the transit party the level party takes ground elevations at each engineering station and at such intermediate points as are warranted by stream crossings or other changes in the topography.

As the field work progresses an alignment map and profile are made in the field office. These should be kept up to date in order that errors in transit or level work may readily be discovered and necessary corrections made while the field parties are still in the vicinity. The field map and profile usually are only roughly made, as their paramount object is the detection of errors that must be corrected before the instrument work can proceed.

It is advisable, therefore, that a complete and accurately drawn map and profile of the line be prepared in the drafting office at headquarters so that the engineer who is to design the pipe-line transportation system can study it in detail.

DESIGN OF SYSTEM

VISCOSITY OF FLUID TO BE PUMPED

The design of a pipe-line system for the transportation of oil is greatly influenced by the viscosity of the oil to be pumped. It has been shown[8] that the viscosity of gasoline is somewhat less than that of water. Therefore, in designing a pipe-line system for the transportation of gasoline the engineer will obtain reasonably accurate results by neglecting this small difference in viscosity and designing the system, so far as viscosity is concerned, for the transportation of water, making due allowance for the difference in the specific gravity of water and the grade of gasoline to be handled. Table 2 shows the specific gravity of various grades of gasoline at 60° F. A pipe line designed for the transportation of motor gasoline, which is approximately 75 per cent as heavy as water, in general, should be satisfactory also for aviation and natural gasoline.

[8] Wilson, Robert E., McAdams, W. H., and Seltzer, M., The Flow of Fluids Through Commercial Pipe Lines: Jour. Ind. and Eng. Chem., vol. 14, February, 1922, p. 105. (The curve for hexane is approximately equivalent to that for natural gasoline.)

TABLE 2.—*Specific gravity of water and of various grades of gasoline at 60° F.*

Liquid	Specific gravity at 60° F.
Water	1.0000
Motor gasoline	.7510
Aviation gasoline	.6993
Natural gasoline	.6654

As many volumes have been written concerning the flow of water in pipe lines this paper will not go into the details of that subject. For checking computations the engineer will find hydraulic tables, such as those prepared by Williams and Hazen [9] and Weston,[10] very useful.

POWER PROFILE

For convenience the profile map should show, beneath the ground elevations, a second line called the "power profile," which in the case of a line to transport motor gasoline would represent the ground elevation multiplied by 0.434×0.75, or the static head in feet reduced to pressure in pounds per square inch.

DETERMINING NUMBER AND LOCATION OF PUMPING STATIONS

Gasoline pipe-line pressures up to 600 pounds per square inch have been found entirely feasible, so that the engineer in designing a new system, especially if welded pipe is to be used, may safely use this figure as a maximum working pressure on the system.

If oil lines, however, are to be used as a gasoline system the safe maximum working pressure will, of course, depend on the type and condition of the pipe and pumps, whether the lines are single or looped and their position along highways and through cities, and various other considerations affecting safe and practical operation.

Suppose that the engineer is called upon to design a system that will deliver 200,000 gallons of motor gasoline per 24 hours through a line 80 miles long, the ground elevations of which are shown in Figure 2.

By the use of formulas or hydraulic tables [11] for friction of water in pipes, one will find, using a value of $C=130$, that a smooth pipe 4 inches in diameter will deliver approximately 201,600 gallons per 24 hours, with a loss of head due to friction of 14 feet per 1,000 feet of pipe. Therefore,

$80 \times 5,280 = 422,400$, length of pipe line in feet,

$\frac{14 \times 422,400}{1,000} = 5,913.6$, total loss of head in feet,

$5,913.6 \times 0.434 \times 0.75 = 1,924.9$, pressure in pounds per square inch necessary to overcome friction when pumping gasoline,

$\frac{1,924.9}{80} = 24.0$, pressure in pounds per square inch per mile necessary to overcome friction when pumping gasoline.

[9] Williams, Gardner S., and Hazen, Allen, Hydraulic Tables: John Wiley & Sons (Inc.), New York, 1920, 115 pp.
[10] Weston, Edmund B., Friction of Water in Pipes: D. Van Nostrand Co., New York, 1907, 120 pp.
[11] Williams, Gardner S., and Hazen, Allen, Hydraulic Tables: John Wiley & Sons (Inc.), New York, 3d ed., rev., 1920, p. 32.

As shown by the power profile in Figure 2, the pressure in the system, due to the difference in elevation between pumping station No. 1 and the terminal, is 293−38, or 255 pounds per square inch.

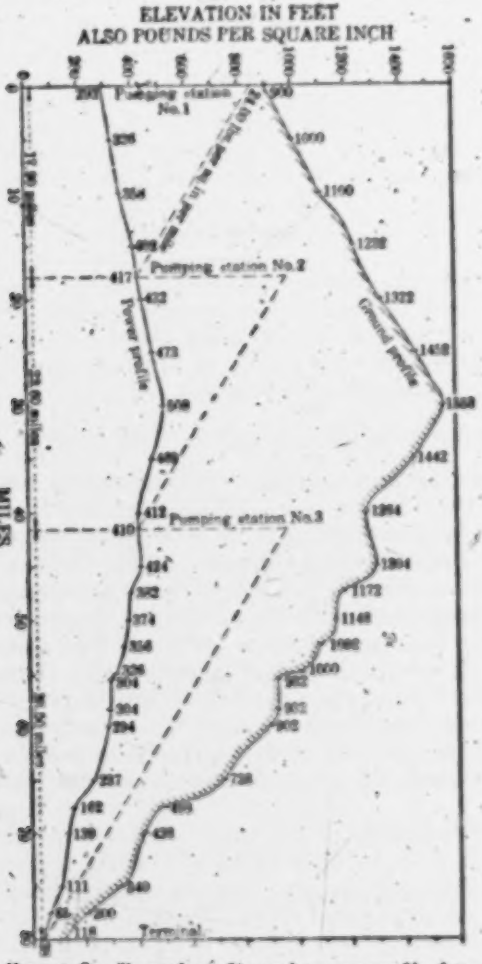

FIGURE 2.—Ground profile and power profile for pipe line

The pressure to be supplied by the pumps will be 1,924.9−255, or 1,669.9 pounds per square inch. If three stations are used the pressure on each pump will be $\frac{1,669.9}{3}$, or 556.6 pounds per square inch, or well under the allowable maximum pressure of 600 pounds per square inch.

With the pumps working against a pressure of approximately 557 pounds per square inch such a system should deliver about 0.8 of 1 per cent more gasoline through the line than the requirement. This excess quantity, however, would be cut down somewhat on account of the friction of short bends, valves, and fittings at the

stations. On the other hand, the pressure on the pumps at each station could be increased considerably without exceeding the 600-pound limit.

If the theoretical capacity of the line as calculated seems satisfactory the position of the pumping stations may be determined as follows: Beginning at the source of the line (fig. 2), plot on the vertical scale a point (849.6) representing 556.6 pounds (the approximate working pressure of the line) plus the static head shown on the power profile. At some convenient distance out—for example, 10 miles—plot the point that represents the pressure at this position on the line (609.6). This pressure at 10 miles will be 240 pounds less than that represented by the first point plotted. Draw a line through these two points and produce it to intersect the power profile. The intersection of the line and the power profile is the theoretical position at which the pressure in the pipe becomes zero; here pumping station No. 2 should be erected. On the vertical scale above this intersection plot a point representing 556.6 pounds plus the static head and proceed as before, continuing to the terminal of the line. If the plot has been accurately made the last diagonal line or gradient will intersect the power profile at the terminal point.

It may happen that a pumping-station site will fall on ground that is undesirable for the erection of tanks and buildings because of swamps, extreme roughness, or other physical characteristics. Under such conditions it is usually better to choose a pumping-station site on either side of the line to the right or left of the theoretical location than to move backward or forward a half mile or more and unbalance the system. If a detour is necessary the new portion of the line should be surveyed, the profile replotted, and all stations relocated.

In some of the pipe-line systems now in use in the United States the pumping stations have not been properly located. The result of this error is that when the system is operating near its maximum capacity equal quantities of oil can not be delivered by the various stations with a constant pressure on the pumps. Engineers engaged in the design and construction of oil-transportation systems will do well to remember the truth of the old adage that no chain is stronger than its weakest link. If 9 pumping stations, of a system containing 10, have a daily maximum capacity of 200,000 gallons and the tenth a maximum capacity of 175,000 gallons then the entire system has a maximum capacity of only 175,000 gallons. Whatever time and money have been expended in enlarging the capacity of the nine stations are wasted until the capacity of the tenth station is equally increased.

CONSTRUCTION

The construction of a pipe-line system for transporting gasoline proceeds in much the same manner as that designed for an oil system.

As gasoline trunk lines are relatively small, ranging from 4 to 10 inches in diameter, they are often constructed in a remarkably short time. Todd[12] describes the completion in seven weeks of a 6-inch

[12] Todd, Lafe, Construction Record Set On Union Oil's 81-Mile Natural-Gasoline Line from Kettleman Hills to Coast: Pipe Line News, vol. 2, June, 1930, pp. 12–15.

welded line 81 miles long and attributes the speed with which the line was built to the use of modern pipe-laying machinery, expert supervision of work, and careful planning before construction was started.

PREPARING RIGHT OF WAY

Where the pipe line passes through heavily timbered country, as in certain parts of Texas and Louisiana, a gang of men must often precede the ditch gang and chop out brush and trees for several feet on either side of the transit line. In fact, in such territory they may have to clear away brush and trees for the transit line.

HAULING AND DISTRIBUTING

The pipe is shipped by railroad from the mills to the nearest or most convenient railroad sidings adjacent to the line. From these points it is hauled by automobile trucks, tractors, or wagons and distributed along the right of way.

Figure 3 shows a tractor being used in hilly country to drag pipe joints from the nearest delivery point by truck into position along the right of way.

Many oil companies have adopted standard types of construction where pipe lines pass under railway tracks and highways. Power [13] describes a type used by the Great Lakes Pipe Line Co. A culvert pipe about 2 inches larger in diameter than the pipe line is placed on a gradient beneath the railroad or highway right of way. The culvert extends a short distance beyond the boundaries of the railroad right of way and is vented at the high end. The pipe line passes through the culvert pipe. This is good practice, because when necessary the pipe line can be removed and replaced through the culvert without disturbing the surface of the highway or railroad right of way. Many of the railway companies require the oil companies to follow standard types of construction when placing oil lines beneath their right of way. In southern California many miles of pipe line carrying natural gasoline have been laid beneath the surface of paved streets without the use of culvert pipes. Some of these lines have been in operation for years and have never given trouble. The precaution has been taken, however, to protect the pipe lines against electrolysis and corrosion.

TELEPHONE AND TELEGRAPH LINE

A combination telephone and telegraph line [14] is very important in the construction and operation of a pipe line. It is often placed along the right of way beside the pipe line. The poles are distributed in the same manner as the pipe. The construction of the telephone and telegraph line precedes that of the pipe line as its use greatly facilitates the construction of the latter. Figure 4 shows an open ditch with pipe joints "strung" beside it. The telephone line has been completed and is in operation.

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[13] Power, John, Gasoline by Pipe Line: Nat. Petrol. News, vol. 22, Nov. 26, 1930, pp. 31–35.

[14] Mitchell, Claude, Important Factors in Pipe-Line Communication Systems: Petrol. Eng., vol. 1, August, 1930, pp. 37–38.

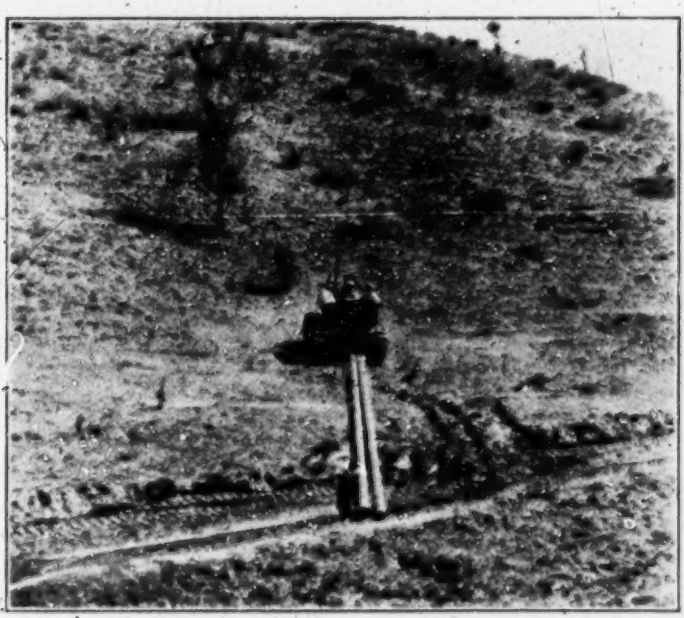

FIGURE 3.—Tractor being used in hilly country to drag pipe joints into position along the ditch

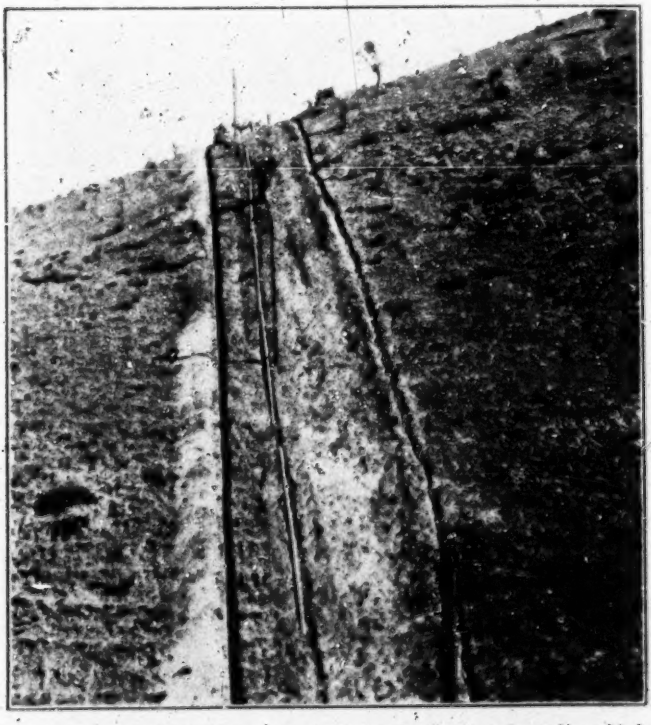

FIGURE 4.—Completed ditch with pipe joints beside it ready to be welded. Note that the telephone line has already been completed.

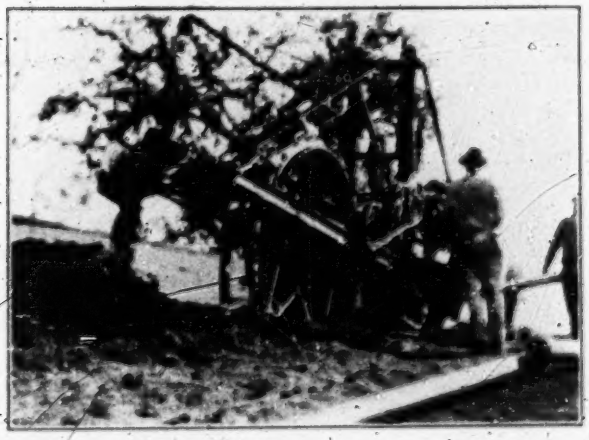

FIGURE 5.—Ditch-digging machine at work on a pipe-line ditch.

DITCHING AND BACK FILLING

The ditch for a pipe line is now usually dug with mechanical ditch diggers. Manufacturers have so perfected these machines that ditching by hand is necessary only at railway or highway crossings, in very rough country, or in territory containing rock sufficiently hard to require blasting. Figure 5 shows a type of machine used for ditch digging. Back filling is also done by specially designed machinery.

WELDING

The most important development in recent years in pipe-line construction has been the welding of pipe joints. Formerly welding was done by oxygen and acetylene gas exclusively, but during the past year a number of lines have been electrically welded. In the smaller sizes seamless pipe has been extensively used, and in the larger electrically welded pipe (pipe with the longitudinal or spiral seam electrically welded) is coming into use. This type of pipe[15] is made of steel with a carbon percentage of 0.25 to 0.35 and a tensile strength of 64,000 to 72,000 pounds per square inch.

The joints of pipe delivered in the field for welding usually are 35 to 45 feet long, whereas the screwed pipe formerly used was delivered in joints about 20 feet long. Although there are thread compounds on the market that will keep the joints of screwed pipe leak proof, even when gasoline is being pumped through the line, the author believes that trunk lines, or lines that may be considered reasonably permanent, should be welded. When the welding has been properly done the line becomes practically one piece of pipe from pumping station to pumping station and should be no more liable to leak at the welds than at any other place in the walls of the pipe. Several methods for joining pipe lengths by welding are now in use: (1) The butt weld, (2) plain bell-and-spigot weld, (3) bell-and-spigot weld with welding dam, (4) bell-and-ring weld, and (5) flange weld. These are shown in Figure 6. For butt welding the ends of the pipe are beveled at an angle of approximately 45°. The criticism of this type of joint is that where the edges of the pipe are not in complete contact there is danger that "icicles" will be formed inside the joints during the welding process. Some of these may extend far enough into the pipe to prevent the passage of a "go-devil" or cleaner, which is used if the pipe needs cleaning. At least one welding company, however, is now developing a weld which it claims will eliminate the formation of icicles. In the plain bell-and-spigot weld one end of each joint is expanded or belled so that the plain end of another joint fits into it. The weld then connects the edge of the belled joint to the outer circumference of the plane or spigot joint. In the bell-and-spigot weld with welding dam the spigot end has a ridge or shoulder around the circumference of the pipe of sufficient height and at such a distance from the end of the pipe as to form a dam when the pipe joints are placed in position to be welded. The welding metal placed in this dam joins the edge of the belled joint with the outer circumference and shoulder of the

[15] Heltzel, W. G., Progress in Pipe-Line Transportation: Pipe Line News, vol. 2, February, 1930, pp. 14–19.

spigot joint. In the bell-and-ring weld both ends of the pipe joint are belled and the belled edges beveled at an angle of about 45°. A ring of steel is placed inside the bells, and the welding joins the edges of the pipe joints and the steel ring. In the larger sizes of pipe the flange[16] weld has been used successfully. The ends of each pipe section are provided with a narrow flange formed by rolling the metal out at right angles to the axis of the pipe. The width of the flange is about four times the thickness of the metal of the pipe. The

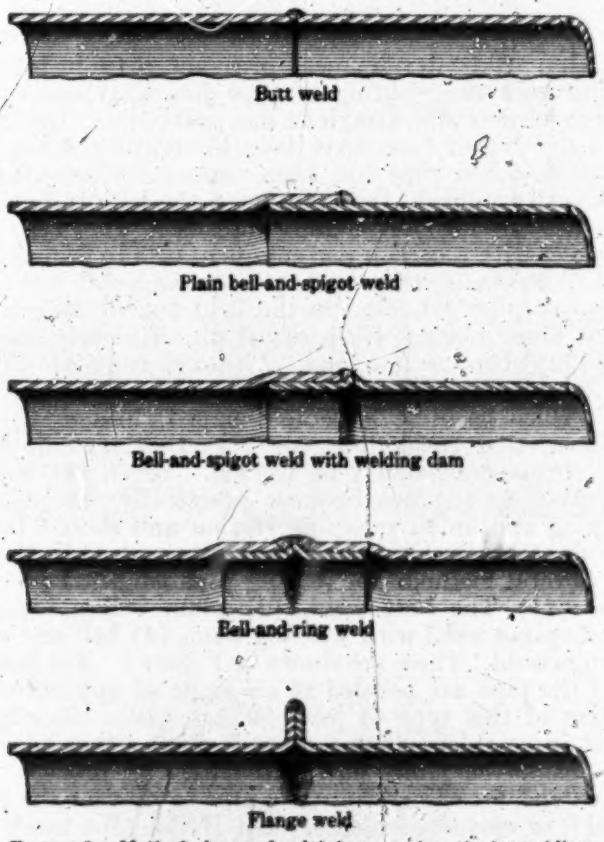

FIGURE 6.—Methods in use for joining pipe lengths by welding

weld metal is placed along the peripheries of the flanges. Such an arrangement provides not only a strong bond between integral parts of the pipe line but an expansion joint as well.

Four or five joints usually are welded together beside the ditch and then placed in position on skids over the open ditch where the final welds are made. Large portable cranes are used to lower the welded line into the ditch.

Pipe lines up to 8 inches in diameter and buried 3 feet or more in the ground may be safely laid without expansion joints. However,

[16] Jones, L. T. A New Development in Pipe-Line Girth Welding: Pipe Line News, vol. 2, April, 1930, pp. 20–22.

as the pipe probably will be warmer when it is laid than at any later time it is considered good practice to zigzag it back and forth along the bottom of the ditch.

STREAM AND RIVER CROSSINGS

Overhead crossings are general where dry washes, irrigation ditches, or streams are encountered. These washes may range from those that are spanned by one unsupported joint of pipe to large streams several hundred feet in width, requiring elaborate suspension bridges. Such a suspension bridge for a pipe line, constructed by the City Service Gas Co., is described in the Petroleum Engineer.[17]

Kenan[18] describes a 2,256-foot suspension-type pipe-line bridge across the Red River near Byers, Tex. This bridge has two main suspension spans 752 feet long and two backstay spans 376 feet long.

Sometimes large streams and rivers are crossed by placing the pipe on such structures as railway and highway bridges, but this is not good practice as gasoline lines present a dangerous fire hazard.

The usual practice in crossing rivers and large streams is to place the pipe on the river bed. If the river is navigable considerable time may be consumed in obtaining a right of way, as permission to cross may have to come from county, State, and Federal authorities.

If possible, this part of the construction is done when the river level is low. English[19] describes the construction of an 8-inch line built along the surface of ice on the Mississippi River and then lowered to the bottom of the river by cutting a channel through the ice.

Generally, river work is done from a barge about 100 feet long. The joints of pipe after being coated with a protective covering against corrosion are welded together on the barge. As the work proceeds the barge is pulled forward and the pipe lowered to the river bottom. Extra-heavy pipe is used, and the joints are butt welded. Over this weld is placed a steel band of about the same thickness as the pipe and about 3 inches wide. The edges of the band are then carefully welded to the pipe. Sometimes this band is made from a short sleeve of pipe, the diameter of which is such that it will fit snugly over the butt weld. This construction reinforces the pipe at the weld and provides three welds, two of which must be faulty before the pipe will leak.

"River clamps" (fig. 7) are placed on the pipe at intervals—about one to a joint—to hold the line on the bottom of the river. Formerly when screwed pipe was used these clamps were placed over the pipe collars to reinforce the pipe at the joint as well as to weight it down. Now when band construction is used at the weld the river clamps are placed at some other position on the pipe so that they need not be removed when a leak in a weld is repaired. A set of clamps to fit 8-inch pipe often weighs as much as 900 pounds.

[17] Petroleum Engineer, City Service Builds Novel Steel Bridge for Pipe Line: Vol. 1, March, 1930, pp. 80–84.

[18] Kenan, Wilder, The Development and Advantages of the Pipe-Line Bridge: Petrol. Eng., vol. 2, February, 1931, pp. 34–36, 38.

[19] English, J. T., River Crossing is Laid on Top of Ice: Oil and Gas Jour., vol. 29, June 5, 1930, pp. T–187–T–192.

Pontoons are often attached to the pipe as it is lowered into the water to keep it from sinking too rapidly, thereby causing undue strain. After the pipe has been lowered divers are sometimes employed to cut a trench beneath it where there are abrupt changes in contour of the river bed. Hydraulic jets usually are used for this work.

In river crossings it is good practice to lay the pipe lines on the arc of a circle with the convex side upstream. Then when swift currents flow against the pipe, as in times of high water, the pipe is always in compression and it will not pull in two if the river clamps are heavy enough to hold the pipe line on the bottom of the river.

PROTECTIVE COVERINGS

The selection of protective coverings for the prevention of corrosion in pipe lines is worthy of serious consideration. Such coverings now in common use range from relatively inexpensive paints to specially treated roofing papers; they cost from 1 to 8 cents per square foot of area covered.

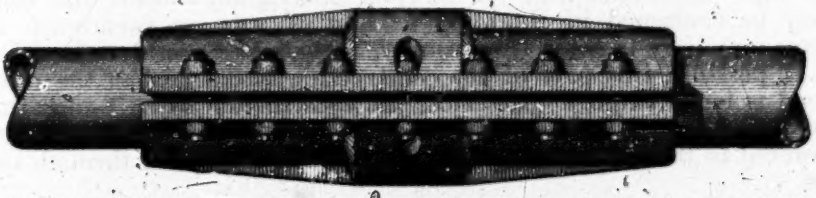

FIGURE 7.—Type of river clamp. A set of this type for 8-inch pipe weighs about 900 pounds.

Concrete has been used to a limited extent for protecting oil pipe lines. Between 1913 and 1920 the Standard Pipe Line Co.[20] coated 180 miles of 8-inch oil line traversing Louisiana swamp land with a mortar composed of 1 part of cement and 3 parts of coarse sand. The coating is reported to be in good condition and has required no repairs or replacements. Other companies are also said to have had good success in the use of concrete for this purpose. The cost of materials per mile of 8-inch line, f. o. b. Chicago (November, 1930), for coating the pipe with 1 inch of concrete is estimated to be from $220 to $245 per mile, depending on the mixture used. To this cost must be added the labor costs of mixing and placing the concrete. In a communication to the author Hough states that with a properly equipped plant 10 men can cover a mile or more of 8-inch pipe line a day.

A portable machine[21] for coating pipe lines with cement has recently been constructed and has been used to a limited extent.

Jones[22] points out that in many soils paint alone, costing only a few cents per square foot, will protect pipe against corrosion for years. Other engineers contend that a pipe line should be either

[20] Hough, J. F., Concrete Coverings for Pipe Lines: Oil and Gas Jour., vol. 29, Jan. 15, 1931, pp. 62, 140–141.

[21] Oil Bulletin, Cement Coating Machine for Pipe Lines: Vol. 17, January, 1931, pp. 63–64.

[22] Jones, A. S., Elimination of Preventable Waste by Corrosion in the Pipe-Line Industry: Bull. Am. Petrol. Inst., vol. 9, Jan. 31, 1928, pp. 271–273.

put in the ground bare or given a thorough and expensive treatment. However this may be, the author believes that there are undoubtedly numerous instances in which pipe-line protection has been overdone; thousands of dollars have been wasted on expensive covering for lines that pass through well-drained soils which contain little if any corrosive salts. Much of this monetary waste could have been prevented by a careful study of soil conditions and by coating only the part of the line that traversed corrosive soil.

Since 1922 [23] the United States Bureau of Standards has been making an exhaustive study of soil corrosion and its prevention. When this research is completed it is believed that after careful examination of a locality the life of a bare pipe line passing through the district can be predicted roughly and the proper type of protective covering specified.

TESTING

As the construction of the line proceeds it should be tested carefully for leaks. A number of methods [24] are described in the Petroleum Engineer. The usual procedure is to divide the line into sections ranging in length from a few miles to the distance between two successive pumping stations. Water is then pumped into the line under the desired pressure and a careful examination made of each joint of pipe for leaks. Where leaks are found the pipe is marked, and if necessary the leaks are repaired when the pressure is released and the pipe drained. Hydrostatic pressure is again applied, and further search is made for leaks. If none can be found the pressure should be held for at least 5 or 6 hours before being released. Some companies hold the pressure for as much as 24 hours.

Many companies [25] employ inspectors to inspect each weld as soon as it is completed. If the weld does not have the appearance of a "good weld" a strip about 1 by 6 inches, having the questionable weld at its middle section, is cut from the pipe with a coupon cutting machine. Tests for tensile strength, ductility, etc., are made in the field. In this way most of the faulty welds are detected before a completed section of the line is tested.

F. L. Hadley, general superintendent, Susquehanna Pipe Line Co., in a personal communication to the author describes the method used by his company as follows:

> When the lines are laid they are subjected to 100 pounds air pressure. The welds are gone over carefully with soap and water. After being made tight at this pressure the line is buried except for the welds and when wholly completed it is tested with water at a pressure of over 1,000 pounds per square inch on 8-inch pipe and 1,500 pounds on 6-inch pipe. If defective welds are found they are cut out and new welds made. Piping in our pump stations is tested at 1,200 pounds water pressure with a hammer test for tightness and strength.

A. H. Riney, chief engineer, Phillips Pipe Line Co., in a personal communication describes the method used by the Phillips Pipe Line Co. in testing their 8-inch gasoline line recently constructed from Borger, Tex., to East St. Louis, Ill., as follows:

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[23] Logan, K. H., Report of Bureau of Standards Soil Corrosion Investigation: Oil and Gas Journ., vol. 28, Dec. 5, 1929, p. 178.

[24] Petroleum Engineer, Accurate Methods Available for Testing Wells: Vol. 2, March 1931, pp. 109–110, 112, 114.

[25] Dameron, J. H., Construction and Equipment of Great Lakes Gasoline Line: Petrol. Eng., vol. 2, October, 1930, pp. 47–48.

At the mill the pipe is first cleaned thoroughly inside with caustic and steam, then tested to 1,200 pounds water pressure and thoroughly checked for other defects. The pipe is then dried inside and out, sealers placed on both ends of the pipe, and priming coat of paint applied to the exterior surface. Each piece of pipe bears the mark of the inspector.

After the pipe is strung along the ditch, it is welded into sections of 200 feet in length. During this welding process an inspector is always present and has on the ground a portable testing machine to make tests whenever he considers it necessary. Our specifications required that these test specimens should stand a pull of 50,000 pounds per square inch. All welds failing below this minimum requirement were rejected. This 200-foot section is then sealed on both ends and filled with compressed air at 90 pounds pressure. Soapsuds are then applied to all welds in order to find any pinholes or imperfections in the welding. If any pinholes develop, the weld is cut off and the pipe rewelded. These 200-foot sections are then welded together, this weld being known as the bell-hole weld. There is no test applied to this bell-hole weld other than the test applied to the entire line. Only very carefully selected welders were used on the bell-hole welding.

After the pipe is painted and lowered into the ditch and back filled, a final hydrostatic test of 1,200 pounds per square inch is then applied to the line. Recording gages are used to detect any pressure drops or leaks. The final test requires that these pressure recordings must stand uniformly and show no drop in pressure for a continuous 40 hours.

BLOCK VALVES

Where the line passes through hilly country some operators install block valves at the low points so that in case of a bad leak in the pipe the gasoline in an adjacent block may be saved by closing the proper valve.

PUMPS

The engineer has a choice of either the centrifugal or reciprocating type of pump, as both are now being used successfully. Some of the advantages of the centrifugal pumping station are:

1. The unit is relatively small and light.
2. The installation can be quickly assembled.
3. A small building usually will suffice for a pump house.
4. Pump foundations are relatively small and inexpensive to construct.
5. First cost of pumping unit is low.
6. A constant pressure on the line can be easily maintained.
7. The installation is almost ideal for automatic control.

Some of the advantages of the reciprocating pump are:

1. It is highly efficient and can handle small as well as large quantities of gasoline to good advantage.
2. A break in the line is indicated instantly by a drop in pumping pressure.

Motive power for operating the pumps is furnished by steam, electricity, or natural gas. The Phillips Pipe Line Co.[28] has equipped its motor-gasoline line from Borger, Tex., to St. Louis with pumping engines of the 6-cylinder, 4-stroke-cycle, gas-engine type burning vaporized butane and developing 260 hp. at 360 r. p. m. Liquid butane in "plugs" is forced through the line. Centrifugal pumps are used. These are 4-inch, 4-stage pumps so arranged that two can be operated in series, developing a pressure of about 750 pounds per square inch at 3,450 r. p. m.

[28] Pound, J. H., Pipe Line Engineering Progress in 1930: Oil Weekly, vol. 60, Jan. 30, 1931, pp. 58–60.

Packing leaks.—Pumps with leaking packing glands have hitherto been an almost constant source of annoyance when light grades of gasoline are pumped. Such leaks may result in a considerable loss of gasoline and are always a dangerous fire hazard. Manufacturers are now at work on this problem, with the result that certain types of packing are being produced that give promise of satisfactorily overcoming the troubles formerly experienced when packing glands leaked.

Valve leaks.—Valve leaks, especially in the gate valves, present another problem. Some operators who handle various grades of gasoline and the lighter refined products with the same pumps arrange their pumping manifolds so that, where desired, blank flanges can be expeditiously placed between valves. A California company has recently constructed a manifold for handling light products wherein blank flanges and orifice flanges have been substituted for valves. Another feature of this manifold is that it is constructed entirely aboveground to facilitate the operation and reduce the hazards from escaping gases.

PIPE-LINE TANKAGE

On account of the extreme volatility of gasoline (especially natural gasoline) pipe-line tankage at intermediate stations in trunk systems should be reduced to a minimum, if not eliminated. The practice at initial and terminal stations is to store natural gasoline under a pressure of 20 to 40 pounds per square inch in steel tanks with dished or conical heads or of spherical construction and to store motor gasoline in tanks with floating roofs or "breather" roofs. These tanks have been discussed by Schmidt.[27] Figure 8 shows a type of tank used for storage of natural gasoline.

AUTOMATIC PUMPING STATIONS

To eliminate tanks at intermediate stations and to reduce operating costs many gasoline pipe-line systems are now controlled automatically. A good example of such a system is the 100-mile pipe line [28] of the Shell Oil Co. recently constructed to transport natural gasoline from Ventura to Wilmington, Calif.

This line has two pumping stations, one at Ventura, where the pumps are driven by steam turbines, and an intermediate station, where electricity is used as motive power. There are two pumps at each station, one for operation and one stand-by. They are 2 by 12 inch, 8-stage, single-case, oscillating, multiplex, centrifugal pumps. The pump cases are constructed to withstand a pressure of at least 1,000 pounds per square inch. They have bronze fittings throughout, solid bronze runners, and bronze, water-cooled, cowl packing glands. The pumps are so designed that runner No. 2 delivers to a runner at the opposite end of the pump; the pressure on the high-pressure stuffing box is therefore about one-fourth of the total discharge

[27] Schmidt, Ludwig. A Floating Roof for Oil Tanks: Rept. of Investigations 2547, Bureau of Mines, 1923, 9 pp.; A Diaphragm or "Breather" Roof for Oil-Storage Tanks: Rept. of Investigations 2984, Bureau of Mines, 1930, 9 pp.

[28] Simms, F. E. A 100-Mile Natural-Gasoline Transmission Line: Western Gas, vol. 3, April, 1927, pp. 20–21.

pressure. The pump cases are split horizontally and so arranged that all rotating parts may be inspected or completely removed without disturbing the suction or discharge piping. Each pump is mounted on a heavy cast-iron base and is directly connected by flexible couplings to the steam turbine or electric motor that operates it.

The intermediate station is operated automatically. The usual storage tank is replaced by a small pressure tank which receives the incoming gasoline. (See fig. 9.) Three liquid-level floats are attached to the piping at the tank. Two of these, *a* and *b*, operate the starting and stopping mechanism for the pump; the third, *c*, actuates a lever throttle valve on the discharge line from the pumps. As the level of the gasoline in the pressure tank rises the throttle valve opens and increases the amount of gasoline that leaves the station. As the level drops the valve closes and continuously decreases the amount of outgoing gasoline. The throttle valve is so adjusted that it can never close entirely. When the pump at the initial station is shut down the pressure tank soon empties and brings into action float *b* which operates the stopping mechanism and shuts down the intermediate pump. When the pump at the initial station is set in motion the pressure tank fills with gasoline and brings into action float *a*, which starts the pump at the intermediate station. This system has been transporting natural gasoline for about three years and so far has been thoroughly satisfactory.

LINE RIDERS

In the operation of all trunk-line systems transporting petroleum products it is common practice to employ line riders or line walkers, who continually patrol the line and look for leaks. Such practice is particularly necessary in gasoline systems, especially where they pass through thickly settled districts, as a small leak, unless quickly detected and repaired, may result in great property damage.

ECONOMIC CONSIDERATIONS

Although the author feels assured that the transportation of all grades of gasoline by trunk pipe-line system is entirely feasible from the standpoint of engineering he believes that the economic factors governing the sales distribution of motor gasoline in each district into which it is proposed to project a pipe line must be considered carefully.

Pipe-line terminals must be at or near large consuming centers. Systems having terminals on navigable rivers, the Great Lakes, or barge canals will be at a decided advantage, as barge transportation,[29] because of the low cost, is undoubtedly destined to become a large factor in the economical transportation of motor gasoline.

COST OF PIPE-LINE TRANSPORTATION

Although no actual figures are available concerning pipe-line shipments there is no doubt that transportation of gasoline by pipe line

[29] Meckler, A. E., Gasoline Distribution by Waterways: Oil and Gas Jour., vol. 28, Feb. 27, 1930, pp. 37, 154–155.

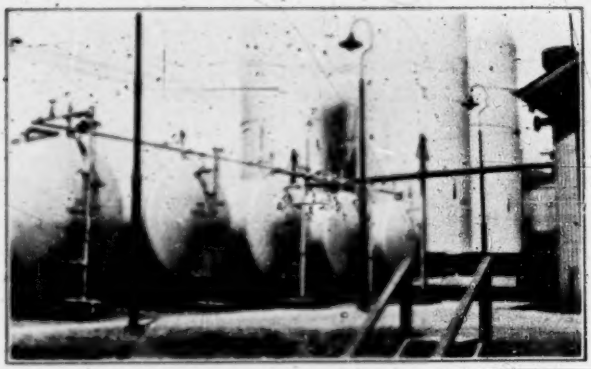

FIGURE 8.—Type of tank used for the storage of natural gasoline. The vertical tanks have dome-shaped roofs

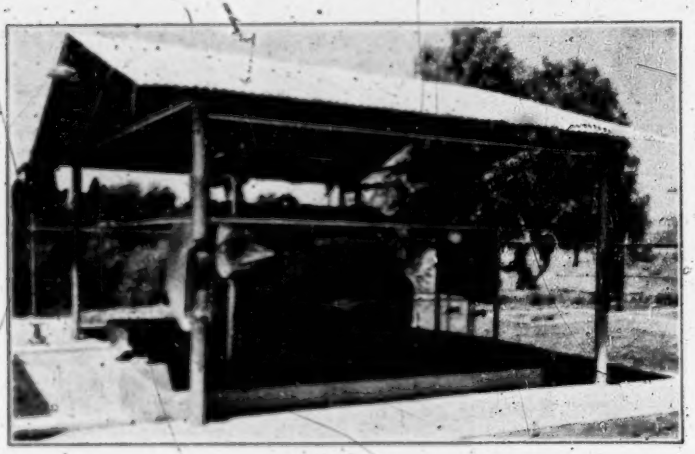

FIGURE 9.—Gasoline pressure tank equipped with liquid-level floats. For explanation see text

FIGURE 10.—Modern type of motor gasoline barge

will show a material saving[30] when compared with railway tank-car shipments under present freight tariffs (August, 1931).

A California oil company has furnished figures for the basis of an interesting estimate showing the cost to deliver motor gasoline by pipe line from San Francisco Bay to Fresno and Goshen in the San Joaquin Valley.

The line is to handle 150,000 gallons (about 15 tank cars) per day from San Francisco Bay to Fresno and 75,000 gallons from Fresno to Goshen. The sizes and lengths of pipe to be used are as follows: 38 miles of 6-inch pipe, 143.3 miles of 4-inch pipe, 181.3 miles of pipe from San Francisco Bay to Fresno, 34 miles of 3-inch pipe from Fresno to Goshen, or a total length of 215.3 miles. Four pumping stations will be required.

The estimated cost is as follows:

Estimated cost from San Francisco Bay to Fresno

[Capacity, 150,000 gallons per day]

38 miles of 6-inch pipe at $7,234 per mile	$274,892
143.3 miles of 4-inch pipe at $4,277 per mile	612,894
181.3 miles right of way at $500 per mile	90,650
181.3 miles of telephone line at $800 per mile	145,040
3 pumping stations at $16,000 each	48,000
	1,171,476
Contingencies, 5 per cent	58,573
Capital investment	1,230,049

DAILY OPERATING COST

[150,000 gallons per day]

Superintendence	$15
Maintenance and repair	90
Line riders	10
Power	63
Pumpers, 3 at $7[31]	21
Loss, 1 per cent of 75,000 gallons at 10 cents	75
Insurance, taxes, overhead	40
Interest on $1,230,049 at 6 per cent	202
Amortization of $1,230,049 at 10 per cent yearly	337
Estimated cost per day	855
Estimated cost per gallon	0.00570

Estimated cost from Fresno to Goshen

[3-inch pipe line 34 miles long; 75,000 gallons per day]

34 miles 3-inch pipe line at $3,326 per mile	$113,084
34 miles right of way at $500 per mile	17,000
34 miles telephone line at $800 per mile	27,200
1 pumping station	16,000
	173,284
Contingencies, 5 per cent	8,664
Capital investment	181,948

[30] Zavoico, B. B., Motor-Fuel Distributing Pipe Lines: World Petrol., vol. 1, October, 1930, pp. 443-446.

[31] Pumping stations would be automatically controlled from the initial station. Only part time is charged for labor at the initial pumping station.

DAILY OPERATING COST

Superintendence	$5
Maintenance and repair	15
Line rider	5
Power	18
Pumpers, 3 at $7 per day	21
Loss, 1 per cent of 75,000 gallons at 10 cents	75
Insurance, taxes, overhead	8
Interest on $181,948 at 6 per cent	30
Amortization of $181,948 at 10 per cent yearly	50
Estimated cost per day	227
Estimated cost per gallon	0.00303

Summary

	Rate per gallon	
Pipe-line transportation cost of gasoline:		
San Francisco Bay to Fresno	$0.00570	
Fresno to Goshen	.00303	
San Francisco Bay to Goshen	.00873	
Railway tank-car freight rate (August, 1931):		
San Francisco Bay to Fresno	.01188	
San Francisco Bay to Goshen		$0.01452
Estimated cost by pipe line	.00570	.00873
Saving in transporting by pipe line	.00618	.00579
Saving, equivalent per cent	52.4	39.9

It will be noted that estimated costs of tank-car shipments do not include 1 per cent loss by evaporation and labor of loading and unloading.

A Mid-Continent company operating a pipe line approximately 482 miles long, through which is pumped a light-gravity crude oil, estimates that on the basis of its present operations it could transport motor gasoline through the system for approximately 17.8 cents per barrel. The railway tank-car freight rate (August, 1931) from the source of the line to the terminal was 80.33 cents per barrel. The saving in transportation by pipe line would therefore be 77.8 per cent, or the pipe-line cost would be 22.2 per cent of railway freight.

COST OF BARGING AND TRUCKING

Barging costs in company-owned barges are estimated to be from 17 to 20 per cent of railway freight tariffs. Figure 10 shows a modern type of gasoline barge. Hauling gasoline in trucks is profitable in competition with railway freight tariffs for distances up to about 200 miles, depending upon highway and weather conditions.

DEMAND FOR RAILROAD TANK CARS

As has been stated, upon the completion of motor-gasoline lines now (August, 1931) being built in the Eastern and Mid-Continent districts (exclusive of natural-gasoline lines), it is estimated that pipe-line capacity will be available in the United States for the transportation of 89,000 barrels, or 3,738,000 gallons daily. This amount of gasoline would fill 373 tank cars having an average capacity of 10,000 gallons. According to the United States Bureau

of Mines petroleum refinery statistics, during the 5-year period 1925 to 1929, inclusive, the average annual increase in the indicated consumption of motor gasoline in the United States has been approximately 107,000 barrels per day. This is 18,000 barrels more than the total daily capacity of all the motor-gasoline lines now under construction or in operation. If the increase in consumption of gasoline continues at an even rate it would appear that there will be no decrease in the demand for tank cars during 1931.

A unique condition in the oil industry is that the railroads, with few exceptions, do not supply tank cars for the transportation of petroleum products over their lines as they do for other commodities. Rowley [32] estimates that there are nearly 275,000 railroad tank cars in operation to-day. These cars are owned either by the oil companies or by such organizations as the Union Tank Car Co. and the General American Tank Car Co., which lease the tank cars to the various oil companies. Hanssen [33] states that during 1929 only 5.5 per cent of the total freight revenue of 37 railroads—or all the important ones operating in the Mid-Continent area—was derived from the transportation of gasoline and refined petroleum products.

Although the construction of motor-gasoline pipe lines will undoubtedly result in the construction of fewer railroad tank cars during the next few years the author believes that future expansion of the petroleum industry will not require the tank cars now in operation to be "junked" because of lack of petroleum products to transport.

CONCLUSIONS

Motor-gasoline pipe-line systems will undoubtedly increase for the following reasons:

1. The decreased cost of transportation. Where water transportation and trucking facilities can be combined it is doubtful if railway tank-car transportation can compete without soon experiencing financial loss.

2. The ease with which the capacity of such a system can be increased by speeding up the pumps, by looping certain portions of the line, and by building additional pumping stations.

3. Minimum losses from evaporation. Trunk lines are practically closed systems.

4. Dependability of service. An oil company operating its own gasoline-distribution system does not depend on outside carriers.

5. The constantly increasing demand for gasoline.

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Lindeweld process permits far greater speed. Welds show strength fully as great as pipe itself.

[32] Rowley, A. M., Gasoline Pipe Lines Open New Era: Oil and Gas Jour., vol. 29, June 5, 1930, pp. T-30, T-33.
[33] Hanssen, Frederick, Pipe Lines and Rail Earnings: Financial World, vol. 54, Sept. 3, 1930, pp. 7, 22.

CARTER, G. O., AND GREENE, T. W. Oxy-acetylene welding of pipe lines. Oil and Gas Jour., vol 29, December 18, 1930, pp. 69, 150.
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CONINE, ROBERT. Pipe different products in same line. Oil and Gas Jour., vol. 29, January 15, 1931, pp. 63, 104.
Phillips new gasoline line reflects great engineering progress in pipe-line construction and operation.

——— Ajax pipe line contains unique features. Oil and Gas Jour., vol. 30, June 4, 1931, pp. T–30, T–32.
Station arrangement permits pumping different oil at the same time without contamination. Can transport gasoline and crude.

CORFIELD, GUY, AND COMMITTEE. Pipe protection. Western Gas, vol. 7, August 1931, pp. 123–132.
The discussion included in this report is designed to point out ways and means of answering the two questions, What protection is required? and What materials should be used? when a new pipe installation is contemplated.

DAMERON, J. H. Phillips to use butane-fueled engines and high-speed pumps on gasoline line. Petrol. Eng., vol. 1, September, 1930, pp. 32–34.
Describes gas-engine-driven centrifugal-pump installations and the use of butane as a fuel for the engines in the Phillips Pipe Line Co.

——— Construction and equipment of Great Lakes gasoline line. Petrol. Eng., vol. 2, October, 1930, pp. 46–48.
Describes and illustrates the two newest systems of pipe-line carriers—construction, capacity, stations, and equipment.

DAY, C. L. Economics of storing light products in pressure containers. Nat. Petrol. News, vol. 22, July 2, 1930, pp. 71–75.
Discusses the various methods and equipment for storage. Fluctuation in the gasoline demand is usually taken care of by a combination of the methods of providing refineries with peak-demand capacities and providing storage of finished product from stack to peak season.

FINANCIAL WORLD. More light on the pipe lines. Vol. 54, October 1, 1930, pp. 16–27.
Continues the controversy as to the probable effects of proposed gasoline pipe-line expansion on the earnings of railroads and tank-car companies. Gives the views of Erwin R. Brigham, president of the North American Car Corporation, in reference to various phases of this question.

FORD, J. B., AND OTHERS. Automatic control of oil-pipe-line stations. Petrol. Mech. Eng., October, 1930, pp. 39–48.
Report of the A. S. M. E. special research committee on automatic pipe-line pumping stations. An experimental station at Tulsa is being used as a laboratory on automatic pumping for both testing and development. See also Oil and Gas Jour., vol. 29, October 9, 1930, pp. 142, 146, 231–232, 235–236.

HANSSEN, FREDERICK. Pipe lines and rail earnings. Financial World, vol. 54, September 3, 1930, pp. 6, 22.
Discusses pipage of natural gas and gasoline and the effect, if any, it will have on railroad freight revenues.

LEARNED, S. S. Operating conditions on Phillips gasoline line. Petrol. Eng., vol. 3, October, 1931, pp. 69–70.
Discusses design and operation of pumping stations and terminals.

MCGREGOR, J. M. Some suggestions for centrifugal pump operation. Petrol. Eng., vol 2, March, 1931, pp. 96, 99–100.
Describes scheme and installation worked out "to eliminate the necessity of working units against partially closed gates and to make possible complete automatic control of a pipe line over a wide range of deliveries."

MESSENGER, J. A. The design and construction of pipe lines. Gas Age-Rec., vol. 66, August 2, 1930, pp. 163–168.
History of early pipe lines: How to select the right of way; coatings divided into two classes, wrapped and unwrapped; electrolysis; joints; design of welds; bends; construction; cleaning inside of pipe.

MITCHELL, CLAUD. Pipe-line communication systems. Petrol. Eng., vol. 1, August, 1930, pp. 37–38.
Explains the requirements of a number of different plants to provide satisfactory pipe-line communication systems.

MOCKLER, A. E. Operate gasoline line early in 1930. Oil and Gas Jour., vol. 28, December 5, 1929, pp. 56, 228, 229.
Long-distance gasoline transportation by pipe line planned by the Tuscarora Oil Co. Cleaning of line with water, gas oil, and gasoline will proceed quickly. Three new pumping stations required. Will handle 25,000 barrels daily. Looked upon as forerunner of other similar pipe-line distributor systems.

——— Gasoline distribution by waterways. Oil and Gas Jour., vol. 28, February 27, 1930, pp. 37, 154–155.
Will accompany coming major development of pipe-line transportation of motor fuel in East. To use barges and Diesel tankers.

——— Pipe-line basis in gasoline prices. Oil and Gas Jour., vol. 29, June 19, 1930, pp. 41, 154.
Thorough revamping of distributing practices to follow pipe-line and waterway delivery of motor fuel.

——— East interested in gasoline pipe lines. Oil and Gas Jour., vol. 30, June 4, 1931, pp. T–27, T–28.
Rapid development of this form of transportation expected to supplement extensive marine distributing organizations.

——— Sun line links Atlantic-Great Lakes. Oil and Gas Jour., vol. 30, June 4, 1931, pp. T–130, T–133.
Gasoline line crosses three States, joining ocean, lake, and canal. Increase in barge deliveries looked for. River crossings featured line building.

NATIONAL PETROLEUM NEWS. Rail competition with pipe lines is recognized. Vol. 22, February 19, 1930, p. 23.
Specific recognition of pipe-line competition as justification for the rates on gasoline and other refined products that the railroads maintain from the Mid-Continent field to St. Louis and Chicago is proposed in a report made to the Interstate Commerce Commission by Examiner W. J. Harris.

——— Sun's gasoline pipe-line system in the East completed. Vol. 23, August 12, 1931, pp. 40–42
Discusses construction problems met in completing gasoline line to Cleveland and to Syracuse.

——— Phillips shipping policy makes new pipe lines theft proof. Vol. 23, August 19, 1931, p. 45.
Theft of liquid contents of line is made impractical through slugging of constituents of Phillips motor fuels rather than the finished product.

OIL AND GAS JOURNAL. Rumania to build gasoline pipe line. Vol. 29, May 14, 1931, pp. 24, 127.
Line to be built from Baicoi to Constantza; necessitated by increase in output of gasoline and costs of rail transportation.

——— Transportation of natural gasoline. Vol. 30, May 28, 1931, pp. 18, 48.
Pipe-line movement either with or without crude oil necessary for economical utilization.

OIL WEEKLY. Four grades through gasoline line without mixing. Vol. 59, October 31, 1930, pp. 30–31.
States that when the 8-inch line of Phillips Pipe Line Co. from Borger, Tex., to Monsanto, Ill., is completed early next year it will be called upon to deliver four grades of gasoline without contamination. Explains how this is done.

PETROLEUM AGE. Gasoline by pipe line. Vol. 24, February, 1930, pp. 34–39.
The transportation of gasoline by pipe line has possibilities. Three distinct projects for this purpose are now under way. If successful this method of transportation will radically affect market conditions.

POWER, JOHN. Gasoline by pipe line. Nat. Petrol News, vol. 22, November 26, 1930, pp. 31–35.
Describes new Great Lakes pipe line now under construction. An airplane trip over the entire line furnishes the information for this article, which includes sketches and details of stations as well as of the line.

ROWLEY, A. M. Gasoline pipe lines open new era. Oil and Gas Jour., vol. 29, June 5, 1930, pp. T–30, T–33.
Tank trucks will serve territory 100 miles wide along route. No extra hazards, and construction and operating problems solved.

——— Gasoline pipe line expansion imminent. Oil and Gas Jour., vol. 30, October 22, 1931, pp. 13, 102.
Successful operation of existing lines places refiners without this means of transportation at a disadvantage.

SHEPARD, E. R. Instrument for measuring corrosive properties of soil. Oil Weekly, vol. 61, May 29, 1931, p. 30.
Describes the Shepard earth resistivity meter. See also Western Gas, vol. 7, July, 1931, p. 62.

SMILEY, T. F. Phillips' pipe line from Borger carries variety of products. Oil and Gas Jour., vol. 30, September 10, 1931, pp. 14, 32.
Natural gasoline, butane, refinery gasolines, and possibly liquid propane will be "slugged" through the line. See also Oil Weekly, vol. 62, September 11, 1931, pp. 28, 30, 32.

TAYLOR, C. M. Progress made in electric arc welding. Oil and Gas Jour., vol. 30, June 4, 1931, pp. T–115, T–116, T–118.
Shielded arc produces welds of high tensile strength, ductility, and resistive to corrosion. Greater welding speed is also obtained.

WELLIVER, J. C. Distributing gasoline through Sun Oil Co.'s 730-mile line. Pipe Line News, vol. 3, October, 1931, pp. 30–35.
Decribes the construction and operation of this system.

WILLSON, C. O. Railroads may build gasoline lines. Oil and Gas Jour., vol. 29, April 30, 1931, p. 13.
Pennsylvania official says rail operators will extend services if necessary to protect customers.

WRESTLER, O. L. Ground moisture survey of a distribution area. Western Gas, vol. 7, June, 1931, pp. 28, 62.
Several methods, mostly electrical, for determining soil corrosivity have been devised. L. A. Gas & Electric Corporation, with distribution area of 200 square miles, has made a survey involving nearly 8,000 tests.

YACKEY, H. H. California gasoline pumping methods. Oil and Gas Jour., vol. 30, June 4, 1931, p. T–29.
Combination of centrifugal pumps and steam turbines makes a flexible unit and permits a closed-system operation.

YOUNG, F. R. Transporting gasoline by pipe lines. Oil and Gas Jour., vol. 30, June 4, 1931, pp. T–59, T–61.
Describes Shell Co. California pipe line from Ventura to Wilmington. Line has been highly successful.

ZAVOICO, B. B. Motor-fuel distribution pipe lines. World Petrol., vol. 1, October, 1930, pp. 443–446.
Visualizes present and future expansions in transportation of gasoline by trunk lines from refinery to thickly populated districts.

ZIEGENHAIN, W. T. Great Lakes gasoline pipe line tariff. Oil and Gas Jour., vol. 29, February 5, 1931, pp. 25, 111.
Rates established to Kansas City and points beyond approximate present rail costs. Trucks are to be used.

The Interstate Commerce Commission has adjudged in *Petroleum Rail Shippers Ass'n* v. *Alton & Southern Railway*, 243 I. C. C. 589, decided March 1, 1941, that,

> "Prior to the perfection of the process of electric welding, pipe line transportation was practically confined to (the) crude oil. That process has made possible the transportation of refined petroleum without loss by reason of imperfect pipe joints; and as a result, since 1931, there has been a rapid growth of gasoline pipe lines."

The opinion of the Court therefore by the odd vote of one of its members, appears to be legislative rather than interpretative, and the wisdom or the necessity for such far-reaching action, should in the light of modern economic conditions, which admittedly did not exist in the times which resulted in the legislation being considered, remain a question of legislative policy within the jurisdiction of Congress.

That Congress has power to require a private interstate pipe line carrier to file valuation reports for whatever purpose Congress may think informative, or otherwise, may be conceded, but the fact remains that Congress has not so legislated, and the history of the times in which the legislation being considered was adopted, as well as the then very limited use (1906) of gasoline and attendant state of the art of pipe line construction, is proof enough of the correctness of this statement of fact.

(*b*) The conclusion (p. 4, printed copy of the opinion) that Champlin's,

> "* * * interstate facilities are operated to put its finished products in the market in interstate commerce at the greatest economic advantage,"

is not to be distinguished from the Uncle Sam operation which was carried on in its entirety for the identical purpose.

Much uncertainty has arisen in attempting to deter-

mine just what Mr. Justice HOLMES meant in the *Uncle Sam* decision in speaking of "Uncle Sam's transportation as,

"being merely an incident to use at its end * * *."

We think the "use" to which he was referring was the storage of finished products in storage tanks in the State of Missouri (R. Vol. II, p. 829), from which sales of products were made by the Uncle Sam Company exactly as Champlin makes sales of products from its storage tanks in other states, and there can be no difference in the principle of the operation in either instance.

If Mr. Justice HOLMES had intended the interpretation which the Court has invoked, he would have used the expression,

"being merely an incident to use at its (refinery)."

The word "end" has a definite meaning in the operation of an integrated oil company and it does not mean the refinery operation which is but half way between the producing of the crude oil and the marketing of the refined product.

So that there may be no doubt of the facts before Mr. Justice HOLMES, we cite R. Vol. II, p. 829, quoting the brief of the Interstate Commerce Commission in the *Pipe Line Cases:*

> "No. 507. The Uncle Sam Oil Company was incorporated under the laws of the Terirtory of Arizona for the purpose of producing, *transporting,* refining and marketing oil. It is not one of the Standard Oil group. It operates oil wells in the Osage Indian Reservation in the State of Oklahoma, and a refinery at Cherryvale, in the State of Kansas. It owns and operates a pipe line, with storage tanks, from its wells in the reservation in the State of Oklahoma to its refineries in Cherryvale, Kansas. Through the agency of a selling corporation, the capital stock of which it owns, *it ships its refined product in tank cars, owned by it, from its refinery at Cherryvale to stations owned by it*

in the State of Missouri. Its right of way for its pipe line was secured by contract over the lands traversed by it, and by permission of the Interior Department over Indian lands; it crosses public highways by grant or permission of the public. Its charter permits it to *transport* oil as a *common carrier.* This company is constructing new lines to other points which will soon be open for traffic." (Italics ours.)

In view of this record, it cannot be doubted that in the use of the word "end" Mr. Justice HOLMES was considering the Uncle Sam filling stations in Missouri as the "end" of its "use" operation.

The Government long argued in this litigation that the "use" of the Uncle Sam Company to which Mr. Justice HOLMES referred, doubtless meant "firing boilers" and "greasing machinery," and Note 8, p. 21 of the Government's brief shows that such mistaken interpretation still lingers.

There is no difference in "the use at the end" in either operation. Both companies store their manufactured products for sale to the consuming public *in storage tanks in states other than the state in which the products are manufactured,* from which storage tanks only such sales are made. Neither of these companies have any "use" for products, except in storage tanks for sales to the public. That is the "use" at the "end" of which Mr. Justice HOLMES was speaking.

The statement (bottom p. 3 and top p. 4 of printed opinion) that,

"* * * The controlling fact under the statute is transporting commodities from state to state by pipe line. * * *"

likewise may not be distinguished from the exactly conformable operation of the Uncle Sam Company.

In the Government's brief in the *Pipe Line Cases* (reprinted R. Vol. II, pp. 701-799, incl.,) the argument was

opened for the Government with the all-inclusive and confident statement that,

> "Congress deliberately intended the Act to apply to every interstate pipe line. It intended to compel every interstate pipe line to become a common carrier as a condition precedent to engaging in interstate commerce. Whether any particular pipe line had or had not been a common carrier prior to the passage of the Act is wholly immaterial."

Mr. Justice HOLMES did not adopt, nor dignify by notice, such contention (which, of course, included the pipe line operations of the Uncle Sam Company) limiting the applicability of the Act (as amended) to such interstate pipe line operations as were the operations of "common carriers in substance," if not so "in form."

The Uncle Sam Company was a statutory *common carrier* in Kansas and authorized by its charter (R. Vol. II, p. 829) to *transport oil as a common carrier*, and it certainly was transporting crude oil from the State of Oklahoma into the State of Kansas by pipe line, so again, when measured by the test which seems to be applied to Champlin in this case, the Uncle Sam operation was squarely within a like test which Mr. Justice HOLMES was unwilling to apply to the Uncle Sam Company.

The opinion of Mr. Justice HOLMES in the Uncle Sam Company is squarely against the contention that "interstate pipe lines" are "statutory common carriers," for otherwise the Uncle Sam Company could not have escaped such classification. The rule which was applied to the pipe line companies which were there held to be common carriers in fact and for that reason alone required to become so in form, was not based upon the statutory definition. Neither was *Valvoline* held upon the statutory definition.

We therefore respectfully urge that the conclusion of the Court, quoted *supra*, viz:

> "That the controlling fact under the statute is

transporting commodities from state to state by pipe line."

is in error in that the "transportation" which brings the operation within Section 1 of the Interstate Commerce Act must be "transportation by persons engaged as *carriers for others*" and that it does not include the movement of property from one state to another by the owner through the use of his own railroad or his own pipe line. In this connection we quote from Mr. Justice CARDOZO in *Pennsylvania Railroad Company v. Public Utilities Commission of Ohio*, 298 U. S. 170, 80 L. ed. 1130, (quoting from p. 175) as follows:

> "• • • The only transportation of this coal by a common carrier of merchandise either by railroad or by water was intrastate transportation in Ohio between Negley and Youngstown. The transportation between Pennsylvania and Ohio was by the owner, who was not a common carrier, but furnished implements of carriage for its own use exclusively. Appellants would have us hold that this interstate transportation by an owner who does not carry for anyone else will be tacked to the intrastate transportation by railroads who are in business as common carriers, and the movement thus consolidated brought within the statute. The statute and the decisions as we read them forbid this unifying process. • • •"

In illustrating the consequences of such a construction of the Interstate Commerce Act, as appellants urged in that case, the Court further said (298 U. S. 176-177):

> "• • • The situation laid before us would not be changed in its essentials if a cooperative association of farmers doing business in Pennsylvania close to the state line were to use a fleet of trucks belonging to the association or its members to carry milk or vegetables from Pennsylvania to a railroad station in Ohio. Even though this were done systematically and not casually or in sporadic instances, the ensuing transportation by

rail, if kept within Ohio, would not be transportation between the states within the meaning of the Act of Congress. * * *"

The Court thereby made clear that the term "transportation" as used in Section 1 of the Interstate Commerce Act as it exists today means transportation by persons engaged as carriers for others, and that it does not include the movement of property from one state to another by the owner through the use of his own railroad or pipe line. The Court also made clear that even though such private transportation by an owner of his property or products is *for the purpose of reaching markets,* nevertheless the movement is not "transportation" within the meaning of that term as used in Section 1 of the Interstate Commerce Act.

Elsewhere in the opinion, the Court made it even clearer that the Interstate Commerce Act is not directed at an owner's interstate movement of his own property or products by his own private means. The Court said (298 U. S. 174):

"* * * The Interstate Commerce Act (49 U. S. C., Sec. 1, *et seq.*) *is aimed at common carriers exclusively,* Sec. 1(1), (3), and not even at all the e. * * *"

Section 1, cited in the quotation last above, is the section which includes the provision that the Act "shall apply to common carriers engaged in * * * the transportation of oil * * * by pipe line." Section 3, cited in the quotation, is the section which provides that "the term 'common carrier' shall include all pipe line companies * * * and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire."

The rule against the Champlin Company is ultimately based upon the conclusion (p. 4, printed copy of the opinion of the Court) that the Champlin use of "differentials" in competitive pricing of products

"* * * points up a significant distinction from the *Uncle Sam* case."

If there is a distinction, then it must be that this Court is presuming the Uncle Sam Company did not include the expense of operating its private line as a business expense, affecting the selling price of its products. It is earnestly submitted that there is no justification for any such presumption. In fact, the opposite is true. The expense of operating its pipe line must have entered into the Uncle Sam Company's cost of doing business, and certainly all such costs and expenses were taken into consideration by the Uncle Sam Company in marketing its products. It is not to be presumed that the Uncle Sam Company would omit the cost of transporting its oil to its refinery in computing its operating costs. Unless this Court can say that the Uncle Sam Company eliminated all costs of operating its pipe line in computing the sale price of its products, then there is no "significant distinction" between the *Uncle Sam* case and the *Champlin* case in regard to their respective pipe lines.

In arriving at a wholesale price, or a price f. o. b. the Champlin terminals, the company has but followed a universal practice. The fact that it uses its own facilities to effect the carriage of the products does not change the established business practice of determining wholesale cost or wholesale price. Nor would that situation alone require the owner of the products to dedicate his private means of transportation to the business of a public carrier. If such were the case, then all of the great chain stores, who ship their merchandise in their own trucks from a central point to retail outlets in various states, would thereby become public carriers in the use of their trucks. The principle would even apply to retail stores who use their own delivery trucks to transport merchandise to their customers in other cities. A farmer hauling his farm product to market would thereby become a common carrier and forced to haul for others. It would result in establishing a principle that a seller of merchandise must use railroads or other public transportation in the carriage of all of his goods or himself

become a common carrier. Surely this Court does not attempt to announce such a principle.

The fact that the Champlin Company has been frank enough to disclose the method by which it met, or has been forced to meet competition, should not be held as a basis upon which to bring it within Section 19a of the Act if it is not a common carrier within Section 1 of the Act. If the Champlin Company had placed upon its products at the respective storage tanks, delivered or f. o. b. prices at such tanks, which were in exact conformity with the price fixed by the use of the "differentials," the assumption would seem to be that it would not then be differentiated from the rule applied to the Uncle Sam Company.

Inasmuch as it is conceded in the opinion that the Champlin Company was hauling its own products, and of course there could be no doubt about that, inasmuch as no sale was ever made to any purchaser at any point other than at the storage tanks and no product was ever earmarked for delivery at any storage plant and no sale was ever made at such terminals other than at a competitive price, with the fixing of which the Champlin Company has never had anything to do, all of which is now subjected to critical interpretation, the question remains as to whether the Champlin Company, if it uses a delivered or f. o. b. price only at its storage tanks, will then be required to file valuation reports under Section 19a of the Act.

In other words, the method one uses to price his products upon the market at a given point cannot legally form the basis upon which his private business may be converted into that of a common carrier. It is confusing to say that the Champlin Refining Company is not a common carrier within Section 1 of the Act, but as a private carrier must nevertheless file "common carrier" valuation data under Section 19a of the Act.

The Interstate Commerce Commission can have no use for a valuation report, except for the purpose of fixing

tariffs and *rates*, and such type of report has never been otherwise used.

We submit that Congress could not have intended such interpretation of the "pipe line act" as is given by the opinion of the Court.

The private carrier is burdened by the opinion with a heavy expense (R. Vol. I, p. 131) in preparing a report, which standing alone, is without significance in a body which concededly is, and has always been, limited in its powers to the regulation and supervision of common carriers.

A rehearing should be granted upon such far-reaching innovation, because it is founded upon a theory that was not advanced, nor argued by either party in the briefs, nor upon oral argument, and is at most a greatly modified affirmance of the action of the (3) judge court.

(*c*) The opinion of the Court does not notice, nor distinguish *controlling* decisions of this Court, viz:

Atlantic Coast Line v. *Standard Oil Co.*, 275 U. S. 257, 72 L. ed. 270;

Pennsylvania R. R. v. *Public Utilities Commission*, 298 U. S. 170, 80 L. ed. 1130;

and,

General Oil Co. v. *Crain*, 209 U. S. 211, 52 L. ed. 754.

First as to the *Atlantic Coast Line* v. *Standard Oil Co.*, *supra*. Chief Justice TAFT, following the Supreme Court of Florida and the United States Circuit Court of Appeals for the Fourth Circuit, said:

"• • • • • • • •

"It seems very clear to us on a broad view of the facts that the interstate or foreign commece in all this oil ends upon its delivery to the plaintiff into the storage tanks or the storage tank cars at the seaboard, and that from there its distribution to storage tanks, tank

cars, bulk station and drive-in stations, or directly by tank wagons to customers, is all intrastate commerce. This distribution is the whole business of the plaintiff in Florida. There is no destination intended and arranged for with the ship carriers in Florida at any point beyond the deliveries from the vessels to the storage tanks or tank cars of the plaintiff. *There is no designation of any particular oil for any particular place within Florida beyond the storage receptacles or storage tank cars into which the oil is first delivered by the ships. The title to the oil in bulk passes to the plaintiff as it is thus delivered.* * * *" (Italics ours.)

The case arose in the following manner (quoting from the opinion):

"* * * * * * * *

"The plaintiff maintains at Port Tampa, Tampa, and Jacksonville large storage facilities, consisting of tanks and warehouses for receiving and storing gasoline, refined oil, lubricating oil and fuel oil. It does not produce or refine any of these products. Gasoline, refined oil and lubricating oil it buys from the Standard Oil Company of Louisiana from its refineries at Baton Rouge, Louisiana, while the fuel oil it buys from the Standard Oil Company of New Jersey from Tampico, Mexico. These four varieties of oil products are brought into Port Tampa and Jacksonville in tank steamers owned and chartered by the sellers, and, with the exception of lubricating oil, the oil is pumped by ships' pumps from the steamers through pipe lines owned by the plaintiff into plaintiff's storage tanks at Port Tampa and at St. Johns river terminal, Jacksonville, Florida. Lubricating oil is pumped from the tank steamers by ships' pumps into tank cars at Port Tampa, or at Jacksonville and by them conveyed respectively over defendant's lines to plaintiff's storage tanks at Tampa, a distance of about 9 miles from Port Tampa, or to Kings Road, a distance of about 2 miles from St. Johns

river terminal, near Jacksonville. All the products are purchased by the plaintiff to be delivered to it by the sellers at Port Tampa and Jacksonville, title not passing to the plaintiff until the products have been so delivered, settlement between the seller and purchaser being made upon the basis of the amount actually delivered into tank cars and tanks. The prices to be paid for gasoline, refined oil and lubricating oil are the current market prices in effect at the time the products are delivered to plaintiff at Port Tampa and Jacksonville. Fuel oil is purchased on yearly contracts at stipulated prices. The tank cars used by the plaintiff in its business are not owned by the railroad company, but are leased by the plaintiff and hauled by the defendant over its lines in common carrier service. * * *"

The applicability of this decision is obvious and must be distinguished, inasmuch as it is in principle here overruled.

In the *Pennsylvania R. R.* v. *Public Utilities, supra,* the material facts were: The Pittsburgh Coal Company by its private barges and railroad moved coal to its cleaning and sizing plant in another state. The purpose of the movement was to reach markets for the coal. The railroad company contended that the movement was with a continuing intention to deliver the coal to customers in other states and that the movement impelled by that intention was interstate commerce. In that case this Court, speaking through Mr. Justice CARDOZO, said that the question before the Court was whether the particular business there involved was subject to regulation under the Interstate Commerce Act, and that the movement from Pennsylvania to the cleaning and sizing plant in Ohio was by private carrier. Although the movement was for the ultimate purpose of sale, Pittsburgh Coal Company was not a common carrier under the Act.

The test of whether or not movement of a commodity is within the coverage of the Interstate Commerce Act is

not to be determined by whether or not the commodity is being moved for the purpose of sale, but by whether or not there exists between the one operating the means of accomplishing the movement and the owner of the property the relation of carrier and shipper.

Further quotation (see, p. 11, *supra*) from Mr. Justice CARDOZO's opinion is unnecessary.

It will suffice to say that that opinion is not distinguished here and its principle is overruled.

The Pittsburgh Coal Company did not use "differentials" in fixing delivered prices at Negley and it is equally true that that company did not haul the coal from the mines in Pennsylvania in its private barges down the Ohio River and over its private railroad from Smith's Ferry to Negley as a gratuity. The fact that it put a *delivered price* upon its coal products at Negley, did not bring it within the Act. Its operation was in practical effect no different than Champlin's operation in measuring volumes of petroleum products after sale upon the market at its terminal storage plants.

In *General Oil Co.* v. *Crain, supra,* referred to by Chief Justice TAFT in the *Atlantic Coast Line* opinion, *supra,* the question was: whether the shipment of "coal oil" in tank cars from its wells and refining plants in Pennsylvania and Ohio to a point in Tennessee (Memphis) where the product is barreled for further shipment to customers in Louisiana and other southwestern states, was an interstate shipment from the well and refinery in Pennsylvania to the customer in Louisiana, or did such removal of such "coal oil" from such tank car at Memphis terminate such shipment so as to make such product taxable by the State of Tennessee?

The Supreme Court held that such transportation did there terminate and was taxable.

Does a different rule apply to shipment of oil, where the transportation agency is a private pipe line, rather than railroad tank cars? We think not. Is there any doubt, in

view of this decision, of the right of the State of Nebraska to tax our products in storage at Superior, or of the State of Kansas to do so at Hutchinson, or of the State of Iowa to do so at Rock Rapids? If these states can so tax such products, then certainly the Interstate Commerce Commission may not regulate such "pipe line" as a "common carrier" in the hauling of products which are the sole property of the owner of the pipe line.

Mr. Justice McKenna, in the *General Oil Co.* case, *supra*, pertinently said:,

"* * * * * * * *

"The beginning and the ending of the transit which constitutes interstate commerce are easy to mark. The first is defined in *Coe* v. *Errol*, 116 U. S. 517, 29 L. ed. 715, 6 Sup. Ct. Rep. 475, to be the point of time that an article is committed to a carrier for transportation to the state of its destination, or started on its ultimate passage. The latter is defined to be, in *Brown* v. *Houston*, 114 U. S. 622, 29 L. ed. 257, 5 Sup. Ct. Rep. 1091, the point of time at which it arrives at its destination. But intermediate between these points questions may arise. *State, Detmold, Prosecutor*, v. *Engle*, 34 N. J. L. 425; *State, Lehigh & W. Coal Co., Prosecutors*, v. *Carrigan*, 39 N. J. L. 35; *The Daniel Ball (The Daniel Ball* v. *United States)*, 10 Wall. 557, 19 L. ed. 999.

"In *Pittsburg & S. Coal Co.* v. *Bates*, 156 U. S. 577, 39 L. ed. 538, 5 Inters. Com. Rep. 30, 15 Sup. Ct. Rep. 415, coal in barges shipped from Pittsburg, Pennsylvania, to Baton Rough, Louisiana, was stopped about 9 miles above destination. It was held that it had ceased to be interstate commerce, and was subject to taxation by the State of Louisiana.

"In *Diamond Match Co.* v. *Ontonagon*, 188 U. S. 82, 47 L. ed. 394, 23 Sup. Ct. Rep. 266, logs in transit to a point without the state were held subject to taxation under a statute of the state, where they would

'naturally leave the state in the ordinary course of transit.'

"In *Kelley* v. *Rhoads*, 188 U. S. 1, 47 L. ed. 359, 23 Sup. Ct. Rep. 259, a flock of sheep driven from a point in Utah across Wyoming to a point in Nebraska, for the purpose of shipment by rail from the latter point, was held to be property engaged in interstate commerce, and exempt from taxation by Wyoming under the statute taxing all live stock brought into the state 'for the purpose of being grazed.' There was no difficulty in the case except that which arose from the contention that the manner of transit was adopted as an evasion of the statute. Otherwise, the grazing of the sheep was as incidental as feeding them would be if transported by rail. The pertinance of the case to the present controversy is in its summary of the principles of prior cases, expressed in the following passage: 'The substance of these cases is that, while the property is at rest for an indefinite time, awaiting transportation, or awaiting a sale at its place of destination, or at an intermediate point, it is subject to taxation. But, if it be actually in transit to another state, it becomes the subject of interstate commerce and is exempt from local assessment.' Property, therefore, at an intermediate point between the place of shipment and ultimate destination, may cease to be a subject of interstate commerce. Necessarily, however, the length and purpose of the interruption of transit must be considered.

"* * * * * * * *"

Inasmuch as the Champlin products, when delivered by the pipe line at the terminal storage tanks, come to rest for an indefinite time, namely, until a sale may be found therefor, interstate transportation within the meaning of the Act is therefore at an end at such time and place, and the consuming or purchasing public has had no right, title or interest in such products prior to such delivery into such storage tanks.

(*d*). Upon the term, "to the use at the end" used by Mr. Justice HOLMES in the *Uncle Sam* case, in addition to what has been said, pages 8, 9, and 10, *supra*, we wish to further say, that, it is not disputed that the Champlin pipe line is operated as an incident to its marketing business. The history of the case shows that Champlin constructed the line in order to preserve its markets throughout the middle west, which it was losing on account of the uncertainties of public transportation of its products. The line is merely used as a facility for moving products from its refining plant to its marketing centers. The principal business of Champlin is producing, refining and marketing petroleum products. The operation of the pipe line is purely incidental to its principal business purposes. It is clearly not a "pipe line company" within the meaning of the authorities.

Appellant has earnestly contended throughout this proceeding that the holding in the *Uncle Sam* case was applicable to the issues of this case, due to the identical nature of the operations of the two companies. The activities of both companies consisted in obtaining crude oil, refining it, and marketing the refined products. The issue in the *Uncle Sam* case arose over the use of its pipe line to draw oil from its wells in Oklahoma to its refinery in Kansas, after which the refined products would be sold and distributed by the company through its marketing facilities in surrounding areas. In this case Champlin had acquired its crude oil and refined it, and is moving its products from one state to another state for the purpose of marketing them. The ultimate common purpose of both companies was to market petroleum products. Each used its pipe line in furtherance of the same ultimate object, the only difference being that in the case of Champlin the oil was moved in the third phase of the operation, the carriage to market, whereas in the *Uncle Sam* case the movement occurred in the second stage of the operation, that is, the carriage to the refineries.

The Court is here called upon to apply a principle, and it is submitted that a slight differentiation as to facts does not change the applicability of the principle involved. In the *Uncle Sam* case the question turned on the issue that the line was a private line and employed for the company's own use. Exactly the same reasoning applies to Champlin's utilization of its line. In the opinion of the Court it is stated with reference to Champlin's pipe line:

> "'These interstate facilities are operated to put its finished products in the market in interstate commerce at the greatest economic advantage."

The same statement could have been made in the *Uncle Sam* case with the same applicability to that company's operations.

Respectful issue is taken with the statement in the opinion of the Court that "the oil is *not* being moved for Champlin's own *use.*" (Emphasis ours.) In the *Uncle Sam* case Mr. Justice HOLMES said that the Uncle Sam Company was drawing oil from its own wells across a state line to its own refinery "for its own *use.*" This Court would apparently hold that the employment of the pipe line by the Uncle Sam Company constituted a "use," whereas the employment by Champlin of its pipe line did not constitute a "use" to Champlin. It is submitted that, if moving petroleum through a pipe line to a refinery is a "use," then moving petroleum products through a pipe line to storage tanks is also a "use." In the one case the use of the oil is to have it available for refining; in the other case the use is in moving the petroleum products to have them available for storage. The *ultimate use* in either case is the sale of the same material.

The word "use" is a word of broad meaning and interpretation, and it is submitted that it is not subject to the limitations to which the opinion of the Court would subject it. In Webster's Dictionary it is said that among the most common meanings of the word "use" are, "usefulness," "utility," "advantage," "productive of benefit."

It has been held that the use of an article contemplates the right absolutely to dispose of it. *National Surety Company* v. *Jarrett, et al.*, 95 W. Va. 420, 121 S. E. 291, 36 A. L. R. 1171.

It will certainly be conceded that there is no direct provision of Section 19a, or any other provision of the Interstate Commerce Act, other than 19a(d), discussed hereinafter, which requires the filing of valuation reports in order to supply congressional information. Nor does the history of the legislation support such a view. The principal objects of the Interstate Commerce Act were to secure just and reasonable charges for transportation, to prohibit unjust discrimination and preferences on the part of common carriers in the service they offer to the public. *Interstate Commerce Commission* v. *Baltimore and Ohio Railroad Co.*, 145 U. S. 263; *Texas and Pacific Railway Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 210; *Interstate Commerce Commission* v. *Cincinnati, N. O. & T. P. R. Co.*, 167 U. S. 479.

There is nothing in the Act, or out of it, which would indicate that it was intended to make the Commission a fact-gathering body to obtain information from private concerns. The argument that Section 19a applies to private carriers seemingly overlooks the plain words of the Act. The opening sentence of Section 19a(a) is as follows:

> "The Commission shall, as hereinafter provided, investigate, ascertain and report the value of all the property owned or used *by every common carrier subject to the provisions of this chapter,*"

and Section 19a(e) which deals directly with the obligation of the common carrier to furnish the reports, reads as follows:

> "*Every common carrier subject to the provisions of this chapter* shall furnish the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers • • •

in aid of such investigation and determination of the value of the property of said common carrier * * *."

Thus, the jurisdiction of the Commission to require the filing of reports is limited to one who is a *"common carrier subject to the provisions of this chapter."* It is doubtful if language could be any plainer or its meaning any clearer. Furthermore, Section 19a, in specifying in its various provisions those to whom the section applies, uses such expressions as "common carrier subject to the provisions of this chapter," "such common carrier," "said common carrier," and "common carrier" no less than *twenty-one* times. This simply means that before a person can be held subject to the provisions of Section 19a, it must appear that such person is a "common carrier subject to the provisions of this chapter." The words "this chapter" include the entire Interstate Commerce Act. And the plural term "provisions" leaves no doubt that all of the provisions of the Act were included in the reference.

Furthermore, the argument that Section 19a(a) applies to a private carrier, is in direct conflict with the holding of this Court in *Pennsylvania Railroad Company* v. *Public Utilities Commission of Ohio, supra.*

Again, the contention that the Commission is authorized to obtain such information for its own or congressional purposes is negatived by the very provisions relating thereto. The requirement for furnishing information to Congress is contained in 19a(d). That subsection provides:

> *"Such investigation* shall be commenced within sixty days after March 1, 1913, and shall be prosecuted with diligence and thoroughness; and the result thereof reported to Congress at the beginning of each regular session thereafter *until completed."*

This provision contains its own limitations. It applies only to such common carriers as may be in existence at the time the section was enacted, that is, those concerning which investigations could be commenced within sixty days after

March 1, 1913, and none other. Moreover, the provisions cease to have effect after the completion of the investigations so commenced. The limitations contained within the subsection clearly indicate the purpose of Congress not to extend the requirements of fact-gathering and filing of reports to any carriers other than those who come specifically within the requirements of Section 19a(d).

Thus, the purpose of filing a valuation report is not merely to furnish Congress or the Commission with information; it is to enable the Commission to reach a basis for determining whether or not the charges made by common carriers are reasonable, and also to shorten and expedite any proceedings which might be brought under the provisions of the Interstate Commerce Act, where the valuation of a company's properties is involved, by making such reports *prima facie* evidence of their contents. This is clearly set forth in Section 19a(i), from which we quote as fololws:

> "All final valuations by the commission and the classification thereof shall be published and shall be *prima facie* evidence of the value of the property, in all proceedings under this chapter as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of this chapter, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission."

This provision clearly implies that Section 19a does not apply to private carriers for the obvious reason that no private carrier, following a valuation report, would be subject to proceedings under the Interstate Commerce Act or to "judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission."

Finally, a private carrier should not be subjected to the heavy burdens required by the filing of a valuation report unless (1) it is clearly required by the statute itself, and (2) there is a definite purpose to be served thereby. If there

be any provision of the Interstate Commerce Act requiring the filing of the reports solely for information purposes, it exists by implication only; and if there is any purpose in filing a valuation report, other than to serve as a basis for rate-making, it hasn't been disclosed in this record. The Attorney General has stated in this proceeding that he knows of no purpose the Commission has at this time beyond requiring the filing of the report. Why the Commission would insist upon this appellant expending great sums of money and utilizing the time and effort of many engineers, accountants, cost experts, and technicians of various kinds in preparing such a report, when it had no definite purpose in requiring it, is not understandable. The only logical explanation is that the Commission intends to demand later that appellant assume the duties of a common carrier. This Court must certainly take judicial knowledge of the fact that the filing of a valuation report is the initial step in requiring a company to file tariffs and assume a common carrier status.

It will be remembered that the Commission, in the hearing before that body, held Champlin to be a common carrier as a prerequisite to the requirement that it file a valuation report; and the lower court thought it necessary to find that appellant was a common carrier before it would uphold the Commission's order.

The record shows that this cause was instituted not merely to seek information, but as a *test case* solely to determine "the question of jurisdiction under Section 19(a)." (R. Vol. II, p. 526)

Thus, appellant respectfully insists that its charge that the Commission is endeavoring to compel it to assume a common carrier relationship amounts to more than a "premonition."

It is said in the opinion of the Court that the power of Congress to regulate interstate commerce is not dependent on the technical common carrier status but is quite as extensive over a private carrier. Appellant takes no issue with

this statement. The question here, however, does not deal with the power of Congress, but with the authority which Congress has delegated to the Interstate Commerce Commission in the Interstate Commerce Act. It is submitted that the Interstate Commerce Commission has no power under that Act to require the filing of a valuation report by any carrier other than one which is a *common carrier in fact.*

Wherefore, the Champlin Company respectfully prays that it may be granted a rehearing and review of the issues determined adversely to it and that an oral argument be allowed upon such rehearing.

CHAMPLIN REFINING COMPANY,
Appellant,

By HARRY O. GLASSER,
DAN MOODY,
Attorneys.

CERTIFICATE OF COUNSEL.

The foregoing Petition for Rehearing is presented in good faith and not for delay.

Dated at Enid, Oklahoma, December 2, 1946.

.....,
HARRY O. GLASSER,

.....,
DAN MOODY,
Attorneys for Petitioner.

SUPREME COURT OF THE UNITED STATES

No. 21. OCTOBER TERM, 1946.

Champlin Refining Company, Appellant, v. The United States of America and Interstate Commerce Commission.	Appeal from the District Court of the United States for the Western District of Oklahoma.

[November 18, 1946.]

MR. JUSTICE JACKSON delivered the opinion of the Court.

The Interstate Commerce Commission, acting under § 19 (a) of the Interstate Commerce Act,[1] ordered the appellant to furnish certain inventories, schedules, maps and charts of its pipe line property.[2] Champlin's objections that the Act does not authorize the order, or if it be construed to do so is unconstitutional, were overruled by

[1] ". . . the commission shall . . . investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. . . . The commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this Act in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission." 37 Stat. 701, 49 U. S. C. § 19a.

[2] On May 15, 1941, the Interstate Commerce Commission, by letter addressed to the president of the Champlin Refining Company, requested that the company prepare and file with the Commission "a complete inventory of the pipe line property of the Champlin Refining Company, except land, showing the quantities, units, classes, kinds, and condition thereof." The Commission enclosed with its letter copies of its Valuation Orders Nos. 26 and 27, with which the inventory was to comply. The Champlin company did not respond to the request in a manner satisfactory to the Commission, and on June 12, 1944, the Commission made the order of which the company here complains. It directed the company to comply with the provisions of Valuation Orders Nos. 26 and 27 within ninety days of the service of the order.

the Commission and again by the District Court which dismissed the company's suit for an injunction.[3] These questions of law are brought here by appeal. Judicial Code § 238, 28 U. S. C. § 345.

Champlin owns and operates a line of six-inch pipe five hundred and sixteen miles in length lying in five states. Originating at Champlin's Enid, Oklahoma refinery, it crosses Kansas, Nebraska, a part of South Dakota, and ends in Iowa. It is used only to convey the company's own refinery products to its own terminal stations at Hutchinson, Kansas; Superior, Nebraska, and Rock Rapids, Iowa, at each of which the line connects with storage facilities from which deliveries are made.

The statute, so far as relevant, says that it shall apply "to common carriers engaged in" "transportation of oil or other commodity" by pipe line from one state to another. It provides also, that "common carrier" includes "all pipe-line companies."[4] This language on its face would seem to cover the appellant's operation.

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[3] In response to the Commission's letter of May 15, 1941, the Champlin company filed with the Commission information and charts which it believed would satisfy the Commission's request. The Commission, however, returned that report to the company, because in it the company had not recognized that it was a statutory common carrier and had not compiled the report from that viewpoint. The company then requested a hearing before the Commission to determine its status. On December 14, 1942, and on reargument, June 12, 1944, the Commission decided that appellant is a common carrier subject to the provisions of the Act. After the Commission had issued its supplementary order of June 12, 1944, appellant petitioned the district court for an injunction against the order. In accordance with §§ 46 and 47 of Title 28, U. S. C., the district judge convened a three judge court, which heard the case and dismissed appellant's petition.

[4] § 1. "(1) That the provisions of this Act shall apply to common carriers engaged in—

"(b) The transportation of oil or other commodity . . . by pipe line . . . from one State . . . to any other State . . .

"(3) (a) The term 'common carrier' as used in this Act shall include all pipe-line companies; express companies; sleeping-car companies;

Champlin contends, however, that the "transportation" mentioned in the Act does not refer to the carriage of one's own goods. The District Court has found that Champlin is the sole owner of the products transported through its pipe line; it has never transported, offered to transport, or been asked to transport any products belonging to any other company or person; its pipe line does not connect with any other pipe line but only with storage tanks at the three terminal points; there are no facilities for putting any petroleum product into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from Champlin's storage tanks by means of truck racks or railroad tank car racks and is not made directly from the pipe line in any instance; no tariffs stating transportation charges have been filed with the Interstate Commerce Commission or with any State commission or regulatory body.

Because of these facts the appellant suggests that the language and holding of this Court concerning the Uncle Sam Oil Company in *The Pipe Line Cases*, 234 U. S. 548, approved in *Valvoline Oil Company* v. *United States*, 308 U. S. 141, govern this case. The Uncle Sam Company operation is described as "simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all . . . ." *The Pipe Line Cases*, 234 U. S. 548, 562. The Court considered this was not "transportation" within the meaning of the Act.

But we think it would expand the actual holding of that case to apply its conclusion to Champlin. The controlling fact under the statute is transporting commodities

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and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire." 41 Stat. 474, as amended, 48 Stat. 1102, 49 U. S. C. § 1. The last words of § 1 (3) (a), "engaged in such transportation as aforesaid as common carriers for hire", do "not affect the generality of the first clause as to pipe line companies." *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, 146.

from state to state by pipe line. Admittedly Champlin is not a common carrier in the sense of the common law carrier for hire. However, the Act does not stop at this but goes on to say that its use of the term "common carrier" is to include all pipe line companies—a meaningless addition if it thereby included only what the term without more always had included. While Champlin technically is transporting its own oil, manufacturing processes have been completed; the oil is not being moved for Champlin's own use. These interstate facilities are operated to put its finished products in the market in interstate commerce at the greatest economic advantage.

Examination of Champlin's pricing methods supports the view that appellant is engaged in transportation even though the products are still its own when moved. The District Court found that price at the terminal points includes f. o. b. price at the Enid refinery and an additional sum called a differential. The differential is the through railroad freight rate from Enid to the final destination (usually the purchaser's place of business) less the carrying charges from the pipe line terminal to final destination. The District Court found, however, that competitive and other conditions "sometimes cause departures from the prices arrived at in accordance with the formula above described." Appellant states that as to some deliveries "rail rates were used merely as a basis for calculating a delivered price, not as a charge for transportation." Even so, and even though departures from the calculated differential are substantial and frequent, we think this practice points up a significant distinction from the Uncle Sam case.

We hold that Champlin's operation is transportation within the meaning of the Act and that the statute supports the Commission's order to furnish information.

Appellant further contends that, as so construed, the Act exceeds the commerce power of Congress and violates

the due process clause of the Fifth Amendment because it is argued that this interpretation converts a private pipe line into a public utility and requires a private carrier to become a common carrier. But our conclusion rests on no such basis and affords no such implication. The power of Congress to regulate interstate commerce is not dependent on the technical common carrier status but is quite as extensive over a private carrier. This power has yet been invoked only to the extent of requiring Champlin to furnish certain information as to facilities being used in interstate marketing of its products. The commerce power is adequate to support this requirement whether appellant be considered a private carrier or a common carrier.

The contention that the statute as so construed violates the due process clause by imposing upon a private carrier the obligations of a conventional common carrier for hire is too premature and hypothetical to warrant consideration on this record. The appellant in its entire period of operation has never been asked to carry the products of another and may never be. So far, the Commission has made no order which changes the appellant's obligations to any other company or person. If it does, it will be timely to consider concrete requirements and their specific effects on appellant. At present, appellant is asked only to provide information about a subject within the power possessed by Congress and delegated to the Commission, and that cannot be considered a taking of property even if it arouses appellant's premonitions.

We hold that the order before us is authorized by statute and that in this respect the statute is within the commerce power and does not offend the Fifth Amendment.

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 21.—October Term, 1946.

Champlin Refining Company, Appellant, v. The United States of America and Interstate Commerce Commission.	Appeal from the District Court of the United States for the Western District of Oklahoma.

[November 18, 1946.]

Mr. Justice Reed, with whom Mr. Justice Frankfurter, Mr. Justice Douglas and Mr. Justice Burton join, dissenting.

This appeal brings into question the extent to which the Interstate Commerce Act covers pipe lines by virtue of the provisions of § 1 and § 19a.[1] Acting under the author-

[1] 49 U. S. C. § 1:

"(1) . . . The provisions of this chapter shall apply to common carriers engaged in—

"(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water;

"(3) (a) The term 'common carrier' as used in this chapter shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. . . ."

49 U. S. C. § 19a:

". . . The Commission shall . . . investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this chapter. . . . The Commission shall . . . make an inventory which shall list the property of every common carrier subject to the provisions of this chapter in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission."

ity of these sections, the Interstate Commerce Commission called upon the appellant, Champlin Refining Company, for reports deemed appropriate for it to make, if it is a common carrier under the act. The appellant challenged the Commission's order on the ground that it was not covered by the sections.

Champlin owns a pipe line for the carriage of oil or other similar commodity from its refinery in Oklahoma to various distributing points in other states. It carries no commodities except its own produced in its own refinery and delivered at the ends of the pipe line into its own storage or holding tanks for sale to its customers. It also is sole owner of the stock of the Cimarron Valley Pipe Line Company, admittedly an intrastate common carrier, that supplies the Champlin refinery with its crude oil. The Commission's orders for valuation reports do not treat Champlin and Cimarron as a unitary operation. The Commission, at this bar, disclaimed expressly any intention to test the subjection of Champlin's distributing pipe line to Commission power by Champlin's ownership of the Cimarron stock. As the Court treats the situation as though Champlin's distributing pipe line, between the refinery and the sale tanks only, were involved, we accept for the purpose of this dissent the Commission's view of the test to be applied to Champlin.

Section 1 of the act applies its provisions to "common carriers engaged in the transportation of oil" or similar commodities. In *The Pipe Line Cases*, 234 U. S. 548, and *Valvoline Oil Co. v. United States*, 308 U. S. 141, this Court interpreted the term "common carrier" to include all interstate pipe-line companies that are engaged, within the purview of the act, in the transportation of oil. In these cases, pipe-line companies that carried only their own oil, although all or a large part of it was purchased from producers prior to its carriage in the pipe lines, were held common carriers within the meaning and purpose

of the act, though not common carriers in the technical sense of holding one's self out to carry indiscriminately all oil offered, because the act's evident purpose was to bring within its scope all pipe lines that would carry all oil offered "if only the offerers would sell" at the carrier's price. In the *Valvoline* case, this interpretation of the 1906 Act, 34 Stat. 584, was found to have been carried into the act, as amended in 1920, 41 Stat. 474, despite certain changes in language. 308 U. S. at 145.

It is to be noted, however, that the *Pipe Line* and *Valvoline* cases did not bring within the scope of the Interstate Commerce Act all pipe lines that carried oil to [illegible] the companies were common carriers in [illegible] made them so in form. Those pipe lines held covered by the act in *The Pipe Line Cases* and *Valvoline* were found common carriers in substance because they purchased and carried all oil offered. The Interstate Commerce Act continually has required such carriers to be engaged in the transportation of oil or other commodities. In *The Pipe Line Cases*, a company, Uncle Sam Oil Company, though a pipe line carrying oil, was held beyond the act's reach because not engaged in the transportation of oil as a common carrier within the purpose of the act.

> "When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end." 234 U. S. at 562.

There has been no change bearing on this question in the applicable acts since *The Pipe Line Cases*. As a matter of statutory construction, we see no reason to change from this Court's long standing interpretation. If Congress desires to undertake regulation of the transportation of an interstate carrier, in substance a private carrier, it understands the method of approach. 49

U. S. C. § 304 (a) (3). There is no pertinent legislative history to support so broad an interpretation of pipe line legislation. The evil sought to be remedied was the mastery of oil through control of the gathering facilities.[2] If a line does not carry oil of others, it is not transporting within the contemplation of the act.

In the *Uncle Sam* case it was said that the transportation of oil from well to refinery was "merely an incident to use at the end." We see no difference between the use contemplated by the Uncle Sam Company and this company. Each carries its own oil for the same ultimate purpose—to reach the market.

Nor can we see any significant distinction from the *Uncle Sam* case in the practice of Champlin to use frequently the freight rate from Enid to the final destination as a measure of the addition to Enid refinery, f. o. b. price that it will charge at its distributing tanks. This practice is departed from to meet competition. Naturally some transportation cost must be added to the refinery price for deliveries elsewhere. How much it is or how it is calculated does not seem to us to bear upon the question of whether Champlin is "a common carrier engaged in the transportation of oil" within the scope of the act.

We would have a very different case than the one before us if Congress had provided that all owners of pipe lines carrying oil in interstate commerce should give appropriate information to the Interstate Commerce Commission. This is not what § 19a does. It requires reports only from "every common carrier subject to the provisions" of the act. When an enterprise is "subject to the provisions" of the act is defined by § 1 (1) (b) and § 1 (3). Therefore,

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[2] 234 U. S. at 558–59:

"By the before mentioned and subordinate lines the Standard Oil Company had made itself master of the only practicable oil transportation between the oil fields east of California and the Atlantic Ocean and carried much the greater part of the oil between those points."

it is not § 19a but § 1 that must be construed. The definition of § 1 flows not only into § 19a but also into various other sections. Once an enterprise is found to be included in § 1, the Interstate Commerce Act subjects it to § 19a and other provisions dealing with common carriers "subject to" the act. Thus, to give several instances, it must provide equal and reasonable transportation to all comers. (§ 1 (4)–(6)); and it must file a schedule of rates (§ 6 (1)). If, therefore, any doubt is felt about the applicability of some of these requirements, the doubts are properly to be taken into account in determining the scope of § 1. The range of servitudes to which this pipe line is subjected by including it in § 1 bears vitally upon whether such a construction should be given to § 1.

For the reasons detailed above, we do not think that Champlin is covered by the act and we would reverse the decree of the District Court.